# Customs Bulletin

**Regulations, Rulings, Decisions, and Notices concerning Customs and related matters**

# and Decisions

**of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade**

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

## NOTICE

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# U.S. Customs Service

## *Treasury Decisions*

19 CFR Parts 7, 10, 22, 113, 145, 158

(T.D. 83-212)

### Customs Regulations Revision Relating to Drawback: Specialized and General Provisions

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final revision.

SUMMARY: As a part of the general revisions of the Customs Regulations, the Customs Service is revising its regulations which govern drawback. Drawback is a refund or remission, in whole or in part of a customs duty, internal-revenue tax, or fee lawfully assessed or collected because of a particular use made of the merchandise on which the duty, tax, or fee was assessed or collected. The rationale for drawback has always been to encourage American commerce or manufacturing, or both. This revision sets forth the general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims. This revision also follows a new format, and includes changes or additions in language to clarify the current provisions. Some of the substantive changes are new and some are based upon interpretative rulings. Furthermore, based upon the comments received from the public in response to the notice of proposed revision and Customs initiative, other changes have been made in the document as proposed, especially with regard to "same condition" drawback and the notice of exportation procedures.

EFFECTIVE DATE: December 12, 1983.

FOR FURTHER INFORMATION CONTACT: Legal aspects: George Steuart, Carriers, Drawback and Bonds Division (202-566-5856); Operational aspects: Betty L. Colburn, Duty Assessment Division (202-566-5307); Audit aspects: Maury Johnson, Regulatory Audit Division (202-566-2812); U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

## SUPPLEMENTARY INFORMATION:

### Background

Drawback is a refund or remission, in whole or in part of a customs duty, internal-revenue tax, or fee lawfully assessed or collected because of a particular use made of the merchandise on which the duty, or tax, or fee was assessed or collected.

The rationale for drawback has always been to encourage American commerce or manufacturing, or both. It permits the American manufacturer to compete in foreign markets without the handicap of including in his costs, and consequently in his sales price, the duty paid on imported merchandise.

Two examples of drawback follow:

1. "A" imports Australian grease wool, and produces from it wool top which is sold in the United States. At a later date, "A" uses domestic grease wool of the same kind and quality to produce wool top and the wool top is exported. "A" can claim and receive drawback on the duty he paid on the Australian grease wool.

2. "B" imports semiconductors which he uses in manufacturing television sets. If the television sets are exported, "B" may claim and receive drawback on the duty paid on the semiconductors.

This revision is part of the general revision of the Customs Regulations and amends Chapter 1, title 19, Code of Federal Regulations (19 CFR Chapter I), by removing present Part 22 and adding a new Part 191.

Part 191 sets forth the general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims. Part 191 follows a new format, and contains changes or additions in language to clarify the current provisions. Substantive changes to Part 22 have been made in Part 191. Some of the changes are new and some are based upon interpretative rulings. Revised Part 191 is divided into sixteen subparts.

Significant changes adopted in the revision include:

1. Defining the primary terms used throughout the revision;

2. Removing the application procedure which precedes the filing of the drawback proposal and approval of a specific drawback contract;

3. Providing a sample drawback proposal to a prospective drawback claimant upon request;

4. Providing for the use of a general drawback contract prepared by Customs Headquarters and published in the Customs Bulletin for use by any manufacturer or producer desiring drawback who can comply with the conditions of the contract;

5. Retaining the certified notice of exportation procedure in 2 circumstances used to establish exportation of articles for drawback purposes;

6. Discussing materials used for construction and equipment of vessels and aircraft built for foreign account and ownership;

7. Discussing same condition drawback;

8. Discussing distilled spirits, wines, or beer which is unmerchantable or does not conform to sample or specification; and

9. Removing regulations relating to bags and meat wrappers, sugar and syrups, linseed oil, crude petroleum and petroleum derivatives, piece goods and fur skins and skin articles.

## Notice of Proposed Revision

On August 26, 1982, Customs published a document in the Federal Register (47 FR 37563), providing the public with 90 days to submit written comments on the proposed revision of the drawback regulations. Commenters had until November 24, 1982, to submit their comments. Customs received several requests to extend the period of time for the submission of comments claiming that because of the complexity of the issues involved, additional time was needed to prepare and submit thorough comments. Customs believed that the requests had merit and, therefore, extended the period of time for the submission of written comments for approximately 60 days to January 21, 1983. Customs received over 150 comments on the proposed revision. In general, the commenters considered the proposed revision to be a vast improvement over Part 22 and offered suggestions for further consideration. Two major areas of concern in the proposed revision related to same condition drawback and the elimination of a certified notice of exportation procedure. Based upon the comments received and Customs initiative, numerous changes have been made relating to same condition drawback which we believe are responsive to the concerns of the commenters. Customs also has determined to retain the certified notice of exportation procedure in the following two specified circumstances:

1. Certification of notice of exportation at the time of exportation; and
2. Certification of notice of exportation by mail.

## Discussion of Comments

### SUBPART A

Comment:

A statement should be added to Subpart A that the new regulations will not abrogate drawback contracts in existence at the time the final rule becomes effective.

Analysis:

It is Customs position that a drawback contract in existence at the time the final rule becomes effective will be honored by Customs and will remain in effect for its duration. Drawback claimants operating under an existing contract need not file a new proposal. Customs believes, however, there is no need to place such a statement in the regulations.

Comment:

The definition of "drawback" in section 191.2(a) should be amended by either removing the references to "duty or tax" or be expanded to include the term "fee."

Analysis:

Because same condition drawback includes the term "fee", Customs has expanded the definition to include this term.

Comment:

The statutory phrase "less 1 per centum" is not included in the definition of "drawback."

Analysis:

By providing in the definition "in whole or in part," Customs has included all types and percentages of drawback returns. For example, for merchandise exported from a Customs warehouse, the return of drawback is 100 percent of the duties paid.

Comment:

There should be a reference in the drawback definiton to the non-payment of drawback on products and by-products of wheat.

Analysis:

Although such a reference is provided in 19 U.S.C. 1313(a), Customs believes that this provision is not of sufficient general interest to be included in section 191.2(a).

Comment:

Section 191.2(a) provides for drawback because of a "particular use made of the merchandise." Therefore, there should be a separate definition of "same condition drawback" (which is based upon imported merchandise not being "used" within the United States); or in the alternative, the drawback definition also should define the "use" to which merchandise must be put to obtain drawback upon exportation.

Analysis:

Customs considers the exportation of merchandise to be a "use" within the definition of drawback; and therefore, this definiton also includes same condition drawback. Furthermore, same condition drawback is discussed in section 191.4(a)(9).

Comment:

The term "designated merchandise" should be removed from section 191.2(b) and the term "imported merchandise" should be added in its place. A delineation of the terms "designated" and "identified" should be made.

Analysis:

Customs considers the term "designated merchandise" to be a technical term of art and should be retained. "Identification" is

being used here in a common, non-technical meaning. To clarify this point, the definition in section 191.2(b) has been changed to read:

> (b) *Designated Merchandise.* Designated merchandise means imported duty-paid merchandise or drawback products identified (either physically or by accounting records), by a drawback claimant as the basis for a drawback claim under 19 U.S.C. 1313(b).

Comment:

The Phrase "manufactured * * * under a drawback contract" in section 191.2(g) should be clarified so that the claimant would know that drawback can be claimed on goods exported prior to approval of the contract.

Analysis:

Customs believes this addition is unnecessary. Section 22.4(n) (which provided that no drawback would be allowed on articles exported before the date of Customs receipt of an application for drawback) was removed by T.D. 79-65 (44 FR 11061). Furthermore, section 191.61 provides that drawback claims may be filed and completed within three years after the date of exportation of the articles on which drawback is claimed.

Comment:

The last sentence of section 191.2(g) is confusing and therefore, should provide a clarifying reference to drawback products used in secondary manufacture. Another suggestion involved using the phrases "dual status" or "dual characteristics" in the last sentence.

Analysis:

Customs has reviewed this sentence and concluded that it is clear and that any additional language would be surplusage.

Comment:

Section 191.2(h) should permit as an option the submission of computer-generated Customs Forms 7543, 7573, 7575 A&B, and 7577 A&B, plus any other forms that may be appropriate. All forms should be "8½ x 11" and require only one signature. Customs Forms 7583, listed as a current form, was discontinued. It is suggested that Customs Forms CF 7585 is intended, since it is listed in proposed section 191.82(e)(2).

Analysis:

Customs believes that references in the regulations to computer-generated forms and their size are inappropriate. Computer-generated forms may be used provided they follow the same format, contain all of the information required, state the form number and title and contain the necessary certification(s) and signature(s). Customs notes, however, that a reduction from "8½ x 14" to "8½ x

11" is planned for all forms. If only one signature is needed, only that signature will be required on the new form. CF 7583 was abolished. CF 7585 will be indicated in its place. This error also appears under section 191.163(e); Therefore, the "7583" is changed to "7585" in both sections.

Comment:

The language of section 191.2(m) defining "same kind and quality" should be clarified, and examples should be added.

Analysis:

Customs believes that the language of this definition is clear and disagrees with the suggestion to add examples because they may prove to be misleading and provide little assistance.

Comment:

The definition of "verification" in section 191.2(o) is so broad that it places no limitation upon the authority of a Customs auditor in conducting a verification. Therefore, there would be unnecessary requests for information by the auditor. Verification should not entail all records and the examination should apply only to those records involved in the drawback program.

There were several suggestions to modify the language of the definition including limiting the examination of records to import, manufacture, and export documents of adding the words * * * "and maintained in the ordinary course of the business." It is claimed that the auditor does not have an absolute right to demand the financial records of a drawback claimant, based upon the holding in C.S.D. 82-38, dated October 5, 1981 (published in Vol. 16 No. 9, Cus. Bul. p. 16, March 3, 1982), which held, * * * "Absent a cogent reason, an auditor does not have an absolute right to demand the financial records of a drawback claimant who has made available records which *prima facie* show importation, manufacture, and exportation for purposes of the drawback law."

Analysis:

It is Customs position that the definition as written is correct. The definition is not as broad as the commenters suggest. Examination concerns only those transactions involving drawback. However, the scope of the audit, which includes the examination of financial records, is reserved by Customs, not the claimant. The reservation by Customs of the right to include in its examination all financial records, must be read in light CSD 82-38. Although Customs will examine first the importation, manufacturing, and exportation records, it reserves absolutely the right to demand all financial records for examination.

Customs notes that it does not prescribe the specific record system for a claimant to maintain. This allows claimants to use their own accounting systems in support of claims and precludes the use of singular purpose systems. Additionally, in the perform-

ance of the examination of records, Customs generally can accommodate central or decentralized control of records by a claimant.

Comment:

Clarification for the term "group of claims" was requested.

Analysis:

In the performance of a verification, Customs may select one claim or a multiple number of claims under one contract. Under some circumstances, claims under all contracts may be selected. Therefore, this phrase is used.

Comment:

The language of section 191.10(c) should be substituted for section 191.2(o) claiming this would appropriately reduce the authority of the auditor.

Analysis:

Section 191.10(c) represents a repeat of the authority for verification contained in section 22.43(c) and is considered properly placed. The definition for verification is new and its purpose is to provide additional explanation for drawback claimants based upon previous interactions between the public and Customs. Therefore, the suggestion is not adopted.

Comment:

The definition of "abstract of manufacturing records" in section 191.2(p) is unnecessary in that Customs Forms 7575 and 7577 are "the abstracts of a manufacturer's records."

Analysis:

Customs disagrees because claimants should know they may provide an abstract of their own which does not involve using Customs forms. Mere reference to only those forms as abstracts may lead claimants to believe they are the only means of submitting an "abstract" of manufacturing records.

Comment:

A definition should be added to section 191.2 to discuss the term "first-in-first-out (FIFO)." Other terms such as "use," "used in," and "appearing in" also should be defined in this section.

Analysis:

Customs has determined not to adopt these suggestions. Although FIFO was given special attention in the proposed rule, this revision has been changed to reflect that any acceptable accounting principle may be used to show use in manufacture, shipping, etc. If Customs were to describe one method, we would have to describe all methods. Also, FIFO is not an accounting method unique to drawback.

Concerning the suggestions that the other terms be added, Customs believes it is better to define those terms in its ruling opinions on a case-by-case basis.

Comment:

A reference should be added to section 191.3 relating to sugar import fees.

Analysis:

Customs disagrees. The present section is not all-inclusive but includes a general listing of duties subject to drawback.

Comment:

A new subsection should be added to section 191.4(a)(2) to include the holding of a Customs Service Decision allowing claimants to treat a commercial lot of imported duty-paid merchandise as domestic merchandise for purposes of substitution drawback.

Analysis:

Customs disagrees because there is no provision in the revision which parallels section 22.5(a)(5), (which required records to be kept to indicate that domestic merchandise was used in manufacture). Therefore, it is unnecessary to change section 191.4(a)(2).

Comment:

There should be a reference in section 191.4(a)(2) to substitution of same condition merchandise.

Analysis:

Customs cannot adopt this suggestion because substitution in this context requires legislation.

Comment:

There should be a reference in section 191.4(a)(2) to substitution of merchandise in foreign trade zones.

Analysis:

Customs notes that substitution in a foreign trade zone is permitted only under the substitution drawback statute, not under the foreign trade zone statute. Manufacturing under substitution drawback can apply to a zone because a zone is considered in the United States. However, it is impractical to describe all interfaces between drawback and other laws in the regulations.

Comment:

Drawback under 19 U.S.C. 1313(c), as discussed in section 191.4(a)(3), should be limited to those claimants who cannot claim drawback under any other drawback procedure.

Analysis:

Customs does not have the statutory authority to write such a regulation.

Comment:

Because of the difficulty faced in what is meant by "domestic tax-paid" alcohol in 19 U.S.C. 1313(d), it is suggested that section 191.4(a)(4) be changed to include "distilled spirits."

Analysis:

"Domestic alcohol" in 19 U.S.C. 1313(d) does not include anything other than tax-paid alcohol as set forth in 27 CFR 5.22(a) and 19.597(a)(1), nor does it include beverage alcohols referred to as distilled spirits in 26 U.S.C. 5171. When the Internal Revenue Code was amended by Pub. L. 85-859, the Customs statute was not amended. Customs recognizes the problem. At this time, however, we cannot adopt the suggestion.

Comment:

Sections 191.4(a)(5) and (6) should be deleted from the regulations and the law as they are obsolete provisions.

Analysis:

Customs agrees that drawback on imported salt for curing fish, and the exportation of packed or smoked meats cured in the United States with imported salt are forms of drawback not currently in use. However, we believe that the statutory reference to them should be made in the regulations.

Comment:

Section 191.4(a)(9) can be used to require that imported merchandise exported in the same condition must be exported under Customs supervision.

Analysis:

This is incorrect. In accordance with Pub. L. 96-609, supervision is applicable only to destruction of the imported merchandise and not to exportation.

Comment:

Section 191.4(a)(10) is inaccurate because (1) same condition merchandise should be covered under this section; (2) there is no reference to "articles of domestic manufacture and production"; and (3) there is no reference to "drawback," "direct identification," or "substitution."

Analysis:

Customs notes that when 19 U.S.C. 1313(j) was promulgated, 19 U.S.C. 1309(b) was not amended. Although this later provision covers vessel supplies which are "articles of domestic manufacture or production," a phrase which confers drawback under the manufacturing drawback provisions, section 1309(b) contains no language which would confer drawback under the same condition drawback law. Until such time as 19 U.S.C. 1309(b) is so amended, merchandise placed aboard vessels as supplies cannot be considered as

having been exported for purposes of 19 U.S.C. 1313(j). Customs is amending section 191.4(a)(10) by adding a reference to "articles of domestic manufacture and production." However, there is no need to refer to "drawback," "direct identification," or "substitution" as suggested because "articles of domestic manufacture or production" cover manufactured drawback articles.

Comment:

Section 191.4(a)(11) should be changed to include the language "merchandise upon which duties have been paid." Also, merchandise must be exported or shipped within 3 years after the date of its importation, rather than 5 years as set forth in the proposal.

Analysis:

Although Customs used the term "duty paid" merchandise in section 191.4(a)(11), that section is being amended by removing that term and adding the suggested language because it does more clearly reflect the statutory language. The 5-year period as set forth in the revision is correct. The 3-year period was extended to 5 years by Pub. L. 95-410 (Oct. 3, 1978).

Comment:

There should be a reference to same condition drawback in section 191.4(b).

Analysis:

Customs disagrees because that section is limited to a particular type of drawback, i.e., internal revenue taxes on unmerchantable alcohol beverages.

Comment:

Records should be retained for at least 3 years after "liquidation", rather than 3 years after "payment" of claims as set forth in section 191.5. Records required to be kept by manufacturers or producers also should be kept by agents or customhouse brokers.

Analysis:

Customs considered amending the regulations to use the term "liquidation;" however, that proposal was rejected. Customs believes that because section 191.5 merely states the time frame for the retention of records, it would be inappropriate to expand that section to include other recordkeepers.

Comments:

Proposed section 191.6(a) appears to exclude attorneys from the category of individuals authorized to sign drawback documents. The requirement that an attorney needs a power of attorney is objectionable in light of the Administrative Procedure Act, specifically 5 U.S.C. 555(b) (relating to the right of a person compelled to appear in person before an agency being entitled to be accompa-

nied, represented, and advised by counsel); and with regard to filing protests, conflicts with 19 CFR 174.3(a)(1).

Legal Determination 79-0131, (May 15, 1979), was criticized. The ruling related to whether an attorney in general practice who has been granted a Customs power of attorney, may sign and file forms connected with drawback or any other Customs matter for his client. The ruling held that because the attorney is not considered a "regular employee" of an importer, he cannot transact Customs business on behalf of his client unless he is licensed as a customhouse broker.

A power of attorney should be required only when the signee is not an officer or a person whom the claimant warrants to be an authorized employee of the corporation for which he is signing. One signature should be required unless additional non-related parties are involved in the transaction.

Analysis:

It is Customs position that attorneys cannot bind corporations, partnerships, or sole proprietorships without a power of attorney to do so. An attorney, therefore, is required to have power of attorney to sign drawback documents. However, the commenter is correct that no power of attorney to file a protest is required of an attorney in accordance witn 19 CFR 174.3(a)(1). Upon reconsideration, Customs is of the opinion that the references to protests in section 191.6(b)(12), as well as the items discussed in sections 191.6(b) (10) and (11), are not technically drawback documents and, therefore, are being removed from the revision.

Customs believes that the reference to the Administrative Procedures Act is misplaced because no one is compelled to appear before Customs in order to apply for drawback. Customs has decided to reconsider Legal Determination 79-0131. Any decision on that ruling will be the subject of a separate document.

Customs cannot broaden the scope of who has authority to sign drawback documents without a power of attorney. Corporations must have on file with Customs a legal document showing that they agree to be bound in drawback matters by the signature of a particular person. Customs requires two signatures on specified Customs Forms because very often only the second party has actual knowledge of certain facts needed by Customs.

Comment:

Section 191.7 should be clarified as to with whom a protest is to be filed.

Analysis:

This comment has merit, and this section has been revised to reflect the procedure set forth in Part 174, Customs Regulations.

Comment:

Section 191.8(b) should be modified to indicate that same condition drawback articles need not be exported under Customs supervision. There is no need to have any reference to "use" in this section.

Analysis:

We believe this section, as well as section 191.4(a)(9), previously discussed, is clear as drafted. Customs supervision is applicable only to destruction of the imported merchandise. Customs believes the reference to "use," although not required here, is helpful to the reader.

Comment:

Section 191.8(c) should include language that duties must have been paid on merchandise upon which drawback is sought, and that the limitation for exportation from warehouse should be 3 and not 5 years.

Analysis:

It is understood that duty has been paid when drawback is sought on merchandise for any reason, or, at least, drawback would not be paid unless duty had been paid on the merchandise. The time limit for merchandise to be exported or shipped is now 5 years, as noted above.

Comment:

Section 191.10(b) makes compulsory the verification of information concerning a claimant's factories located in other regions by the use of the word "shall." It is suggested the words "required by" should be changed to "provided by."

Analysis:

This comment has merit. Therefore, the words "required by" are being removed, and the words "provided for in" are being added in its place. The word "shall" is being removed and the word "may" is being added in its place.

Comment:

The regulations do not consider multi-plant operations with centralized control over drawback records at a home office location.

Analysis:

It is Customs position the commenters concerned with their centralization of records should include this information in their contract. Generally, a verification will be limited to that location.

Comment:

In proposed section 191.10(d), the postponement for payment of all the claimant's drawback pending completion of a verification and the issuance of a report by Regulatory Audit may pose severe financial hardships in the event a verification or issuance of a

report was delayed. Suggestions were made to establish a maximum period of postponement for liquidations from the initiated date of postponement. The suggested period was from 60–90 days from the date of postponement. Others suggested the postponement should apply only to those claims under the same contract subject to verification.

Analysis:

These comments have merit. The regulation is being revised to provide for postponement of payment on only those claims selected for verification. However, specifying a maximum period of postponement is considered too restrictive. In the event a substantial error is revealed during the verification, Customs may postpone liquidation of all related product line claims, or in its discretion, all claims.

Comment:

The use of the phrase "within a specified time" in proposed section 191.10(e) should be changed to show the claimant has a fixed specific time to amend defective drawback contracts. It is suggested that 90 days is appropriate.

Analysis:

It is Customs opinion that use of a specified time would be restrictive, both to Customs and the claimants. Contract deficiencies must be corrected timely. Required changes to contracts will vary in complexity. These matters are best resolved between the responsible Customs Service official and the claimant. The suggestion is not adopted.

Comment:

The question was raised whether the claimant still has the right to file a protest.

Analysis:

This is correct.

Comment:

Section 191.11(a) should be amended to exempt Government instrumentalities operating with nonappropriated funds from the requirement of obtaining bonds relating to drawback claims.

Analysis:

Customs believes that although these instrumentalities are required to obtain bonds, Customs has determined to waive the surety requirements on accelerated bonds and exporter's summary procedure bonds. This section is being amended accordingly.

Comments:

Section 191.11(c)(2) is limited to drawback being available only to a supplier; however, if the supplier of the merchandise is the man-

ufacturer, producer, etc., he has the right under 191.73(b) to endorse the drawback to anyone he chooses.

Analysis:

This comment has merit and, therefore, section 191.11(c)(2) is being amended by adding "or any of the parties specified in section 191.73(b) of this part" after the word "supplier."

Comment:

The section heading of 191.13 "Guantanamo Bay" is insufficent to reflect the information contained therein which also refers to payments or nonpayments of drawback on merchandise shipped to insular possessions or trust territories.

Analysis:

The comment has merit and the section heading is being changed to read:

"Guantanamo Bay, insular possessions, trust territories."

SUBPART B

Comment:

Section 191.21(a) should be clarified to distinguish sufficiently between a specific drawback contract and a general drawback contract.

Analysis:

This comment has merit. The first sentence of this section is being revised by adding at the beginning, "Unless operating under a general drawback contract. * * *

Customs desires claimants to use the least complex procedure. General contracts reduce the burden on both Customs and the public. A claimant should not use both a general and a specific drawback contract.

Comment:

Section 191.21(a)(1) may be confusing when read with 191.22(d) in that it may be believed that brokers or issuers of certificates of delivery may be required to file drawback proposals.

Analysis:

Customs disagrees. Section 191.21 makes it clear that only manufacturers and producers of articles need drawback contracts. There is no requirement for a broker to have a drawback contract.

Comment:

Persons keeping complementary records pursuant to section 191.21(a)(1) should be able to sign those records.

Analysis:

Customs agrees. Because complementary records are kept by the person for whose account the products are manufactured or pro-

duced when the manufacturer or producer is unable to do so, the following sentence is being added at the end of that section:

> Complementary records may be signed by the complementary recordkeeper in accordance with section 191.6(a) of this part.

Comment:

Language should be added to Subpart B to the effect that claimants need only keep "reasonable records" to show compliance with the law, and that drawback should ensue unless "contrary information" is found in the claimant's records.

Analysis:

Customs disagrees. The claimant's records must show compliance with the requirements of the law and regulations. Customs cannot permit a lessening of this burden. Adoption of the suggestion would place the burden on Customs in those cases where the claimant's records indicate a lack of compliance.

Comment:

Section 191.21(a)(2) should be amended so as not to require subcontractors to submit contracts, general or otherwise.

Analysis:

This section has been amended to clarify that subcontractors may use a general contract which requires a minimum of work on their part.

Comment:

Section 191.21(a)(2) should be clarified to indicate that it is drawback merchandise which must be identified.

Analysis:

Customs disagrees. The terms "material" indicates that it is the merchandise which must be identified, which possibly may not be the drawback merchandise after handling by the subcontractor. This regulation applies only to identification.

Comment:

Section 191.22 should be revised to avoid confusion between recordkeeping requirements for 19 U.S.C. 1313(a) and 19 U.S.C. 1313(b).

Analysis:

Section 191.22(a) indicates that that section concerns direct identification drawback and that substitution drawback recordkeeping requirements are found in section 191.32

Comment:

The following language should be added at the end of section 191.22(a)(4) "* * * unless the claimant has selected to utilize the schedule method in their proposal to Customs."

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Analysis:

Customs disagrees. A schedule merely indicates the amount of merchandise used in manufacture during the period. Use of a schedule does not obviate the necessity of filing manufacturing abstracts, which show compliance with the time frames for receipt, use in manufacture, and exportation.

Comment:

In section 191.22(a)(5)(i), the values of each product at the time of separation should be taken into consideration only if they are over a specific percentage, e.g., 5 percent in relation to each other.

Analysis:

Customs cannot adopt this suggestion because the present langauge provides us with the flexibility needed to determine when a value is *de minimis* with regard to the values of its relative products.

Comment:

The 1-month abstract period specified in section 191.22(a)(5)(ii) is too short and should be for several months. The drawback contract rather than the regulation should provide the abstract period.

Analysis:

Customs does not agree. A 1-month limitation provides a safeguard against a claimant receiving more drawback than entitled. Furthermore, the regulation does provide for approval by Customs of a longer manufacturing abstract period. Also, having a limitation on the abstract period leads to uniformity for liquidators and auditors.

Comment:

The reference to "weighted average" in section 191.22(a)(5)(ii) should be deleted because it does not recognize market fluctuations during the abstract period.

Analysis:

Customs disagrees because it is precisely the market values over a manufacturing period which are used to determine a weighted average for by-products.

Comment:

In 191.22(a)(5)(ii), each manufacturing period should be considered the time of separation, rather than the entire time period covered by the claim, with the weighted average market value assigned for each period.

Analysis:

Customs cannot adopt this suggestion. If a claim is made for goods manufactured over more than one abstract period, then unit relative values based on the entire manufacturing period must be ascertained.

Comment:

The term "designated" in section 191.22(b) is misleading.

Analysis:

Customs agrees and has removed this word.

Comment:

Identification of two or more lots of merchandise used for drawback purposes in section 191.22(c) should not be limited to first-in-first-out (FIFO) accounting principles.

The word "shall" in the first sentence should be changed to "may". The phrase "or any other accounting procedure approved by Customs" should be added at the end of the first sentence to permit use of other accounting procedures.

Analysis:

Customs believes this comment has merit and is so revising this section. Therefore, other accounting procedures such as "low-to-high," "identification," and "blanket identification" may be used.

Comment:

Drawback claimants should not have to account for domestic consumption since in doing so, they may lose drawback.

Analysis:

Customs has held, in effect, that if a claimant is using FIFO or any acceptable accounting method for such commingled goods, the claimant need not account for domestic consumption. Accordingly, there is no need to add this to the regulations.

Comment:

Section 191.22 should apply only to 19 U.S.C. 1313(a) drawback and a separate section should apply to substitution drawback under 19 U.S.C. 1313(b).

Analysis:

Customs believes that the appropriate sections are clear. Section 191.22(a) provides the record requirements for direct identification and other non-substitution manufacturing drawback and refers the reader to section 191.32 for record requirements 19 U.S.C. 1313(b). The last sentence of section 191.22(c) is being deleted (as discussed below). Section 191.31 advises that the procedures set forth in subparts A and B are applicable to 19 U.S.C. 1313(b) except as noted in subpart C.

Comment:

Sections 191.22(b) and (c) should be amended to cover single lot and multiple lot identification.

Analysis:

Customs disagrees because single lots need no further identification.

Comment:

The last sentence of section 191.22(c) is misleading in that it is claimed that FIFO must be used to designate merchandise for drawback under 19 U.S.C. 1313(b).

Analysis:

To clarify this, Customs is removing the last sentence of this section and adding a new section 191.32(e) to read as follows:

> e. *Designation*
> A manufacturer or producer may designate any merchandise which it has used in manufacturing or production.

Comment:

The first sentence of section 191.25(b)(2) should be revised by removing the language through "Customs Headquarters" and adding in its place "a letter modifying an existing contract." There should be additions to the list of changes covered by the modification which can be approved by the regional commissioner.

Analysis:

Customs disagrees. To change the first sentence would remove from the regulations the types of contracts which can be approved by the regions, which otherwise requires Headquarters approval. Customs believes that there should be no expansion of the list of changes covered by the modification.

Comment:

One commenter asks whether section 191.25(b)(2) allows a regional commissioner to revoke a contract approved by Headquarters.

Analysis:

Section 191.25(b)(2) delineates the instances when approval of specified modifications are submitted to the regions. When they are received by the regions and approved, the region notifies Headquarters and the modified contract becomes effective. If the existing contract was approved at Headquarters, this is no impediment to the region's action. The contract is not revoked by this action.

Comment:

Section 191.25(c) should be amended by adding "without prejudice" at the end of the sentence.

Analysis:

Customs agrees and has added * * * "without prejudice to claims existing thereunder" at the end of the sentence.

Comment:

The phrase * * * "in accordance with section 191.23 of this part" * * * should be removed from the first sentence of section 191.26.

Analysis:

Customs disagrees. The cross-reference is used to inform the party renewing the contract which Customs office should be notified of the request.

Comment:

Section 191.26 should provide a time limit to indicate when Customs should be notified of an intent to renew the contract.

Analysis:

Customs believes that a specific time period is unnecessary. Customs will accept a request to renew a contract at any time prior to the expiration of the 15-year period.

Comment:

A question was raised whether only Headquarters can renew a contract approved by Headquarters.

Analysis:

Customs notes that under present guidelines, if Headquarters approves the original contract, then it approves the renewal.

SUBPART C

Comment:

It appears from the language of section 191.32(a)(1) that claimants under 19 U.S.C. 1313(b) can continue to designate the imported merchandise most advantageous to them.

Analysis:

This is correct. It is believed that if a claimant under 19 U.S.C. 1313(b) uses FIFO (or any other approved method) for identifying or proving use of merchandise in manufacture, then that claimant must use that method for designating merchandise for drawback. This is not so. As noted above, we have amended section 191.22(c) and added section 191.32(e), for clarification.

Comment:

Section 191.32(a) should include a reference to rulings holding that merchandise not proved to be imported is considered domestic merchandise.

Analysis:

This is not necessary since there is no reference to the use of domestic merchandise in section 191.32(a).

Comment:

Section 191.32(a)(2) does not sufficiently distinguish between "used" and "appearing in" methods.

Analysis:

This comment has merit. The word "or" is being added to this section immediately before the word "appearing."

Comment:

Because section 191.31 refers to Subparts A and B, the question is raised whether is it necessary to include a paragraph on valuable waste in section 191.32(b) in light of paragraph 191.22(a)(2) on this subject matter.

Analysis:

Customs believes both sections are necessary. "Valuable waste" is discussed in section 191.22(a)(2) and "valuable waste records" are discussed in section 191.32.

Comment:

The exchange of petroleum provision in section 191.32(c) should be extended to all fungible goods.

Analysis:

Legislation would be necessary to accomplish this.

Comment:

The language in the second sentence of section 191.33 after "separation of the products * * *" should be deleted.

Analysis:

Customs disagrees. That information is needed to prepare claims.

Comment:

The relative values in section 191.33 should be ignored if the difference in value between by-products is small (e.g., 5 percent).

Analysis:

The present language give Customs flexibility in determining when a value is *de mininus* with regard to the values of its relative products. Customs believes that adoption of the suggestion would complicate the administration of the relative value aspects of the law.

Comment:

Objections were raised regarding the one-month time limitation and the use of the term "weighted" in section 191.33.

Analysis:

Customs believes the sections should not be changed for the reasons previously discussed.

Comment:

Section 191.34 should be amended to allow the general agents' drawback contract under 19 U.S.C. 1313(b) extended to claimants using agents under 19 U.S.C. 1313(a).

Analysis:

There is no necessity for an agent's drawback contract under 19 U.S.C. 1313(a). Under 19 U.S.C. 1313(a), because only the imported merchandise is being subjected to manufacture, it would be sur-

plusage for a principal to operate under the general drawback contract of 19 U.S.C. 1313(a) and have his agent obtain an agent's contract. Under 19 U.S.C. 1313(a), the agent need only operate under a general drawback contract.

SUBPART D

Comment:

The language of Subpart D does not sufficiently reflect contract terminology involving offer and acceptance.

Analysis:

This comment has merit. Clarifying changes have been made to sections 191.42 and 191.43.

Comment:

Subpart D should provide a listing of approved general drawback contracts available to the public.

Analysis:

Customs publishes as Treasury Decisions general drawback contracts when they are offered. However, to include a listing of these contracts in the regulations would require continuous amendment of the regulations as new contracts are published. Customs believes this is unnecessary.

Comment:

Section 191.42(b), which provides specified information that must be provided by a manufacturer or producer to Customs under a general drawback contract, should be expanded to include:

(1) Imported merchandise to be used;
(2) Exported product;
(3) Basis of claim; and
(4) Designated merchandise.

Analysis:

Customs disagrees because inclusion of this additional data is not necessary and submission would pose a burden on the claimant.

Comment:

A regional commissioner should acknowledge within 60 days, receipt of a letter of acceptance by the manufacturer or producer of an offer for a general drawback contract in section 191.43.

Analysis:

Acknowledgement by the regional commissioner is a matter of courtesy and ordinarily will be done within a reasonable timeframe. Customs believes a 60 day requirement is unnecessary.

Comment:

The reference in section 191.44 to renewal of a contract by the regional commissioner "upon satisfactory review" should be re-

moved because that phrase is too ambiguous and subjective, and the regional commissioners should not be required to conduct any review.

Analysis:

Customs agrees. The phrase "Upon satisfactory review" may be confusing and is unnecessary. Therefore, the entire second sentence is being removed.

SUBPART E

Comment:

Customs should retain the certified notice of exportation procedure. Eliminating this procedure effectively will deny claimants drawback. When the claimant is not the direct exporter, the claimant often is unable to obtain the necessary documentary evidence of exportation from the exporter. The exporter may refuse to provide the data to the claimant because of business confidentiality or bear the administrative expense of providing supporting documents. The claimant must expend more money to obtain the document required for the uncertified procedure. The proposed revision is discriminatory in those situations when the claimant is not the direct exporter because proof of exportation may be available only by means of the certified notice of exportation. Customs refusal to expend time and effort required to certify the notice of exportation *after* exportation has occurred is understood. However, it is noted that only a minimal amount of effort is required to perform the certification when the manifest, shipper's export declarations, and notices of exportation are all submitted properly *at the time* of exportation.

Analysis:

Customs believes these comments have merit and has determined to retain the certified notice of exportation procedure in the following two circumstances:

1. Certification of notice of exportation at the time of exportation, and
2. Certification of notice of exportation by mail.

To accomplish this, the word "Uncertified" is being removed from section 191.51(a) and the section heading of section 191.52. Section 191.52(c) has been rewritten and divided into two paragraphs, (c)(91) and (c)(2). Paragraph (c)(1) permits the certified notice of exportation procedure and paragraph (c)(2) provides the uncertified notice of exportation procedure.

Comment:

Section 191.52(b)(3) should be revised by removing the word "gross" and require only "net weight";

Analysis:

Customs disagrees. For regulatory audit purposes, gross weight needs to be specified.

Comment:

The reference in section 191.52(c) (now 191.52(c)(2) as rewritten), to "or certified copies thereof" should be removed in order to conform to C.S.D. 82-59 (Vol. 16, No. 16, Cus. Bul. p. 33).

Analysis:

Customs disagrees. That ruling merely stated that copies of bills of lading, etc., which indicate that the goods were received by the exporting carrier, would be sufficient to support a notice of exportation. This is the "certification" to which section 191.52(c) refers.

Comment:

A "domestic" bill of lading covering a motor carrier shipment to a Mexican border point should be an acceptable document to support an uncertified notice of exportation. A so-called "domestic" bill of lading to a Mexican or Canadian customer should be deemed acceptable.

Analysis:

Customs disagrees. Intermodal and inland bills of lading are not acceptable as proof of exportation as set forth in C.S.D. 82-59.

Comment:

The numbering provision of section 191.529(d) should be eliminated.

Analysis:

Customs disagrees and believes the numbering is necessary for identification purposes.

Comment:

The reference to same condition drawback in section 191.53(b) should be removed.

Analysis:

Customs disagrees because Subpart E is concerned with methods of proving exportation for manufacturing and same condition drawback.

Comment:

The word "may" in section 191.53(c) should be removed and the word "shall" added in its place.

Analysis:

Customs agrees. The regional commissioners should grant summary procedure when it is concluded that its use would contribute to administrative efficiency.

Comment:

Section 191.53(d) should be deleted because no bond is needed for operation under the exporter's summary when a claimant has obtained a bond to file drawback claims under the accelerated payment procedure.

Analysis:

Both bonds are necessary as they cover different aspects of drawback. Furthermore, many drawback claimants operating under summary procedure do not operate under the accelerated procedure.

Comment:

The reference in section 191.53(e)(1) to "identity and location of the ultimate consignee of the exported articles" should be removed because collection of this data is a burden.

Analysis:

Customs notes that the requirement to submit this data is contained in existing section 22.7(d)(2)(ii) and is still needed.

Comment:

The reference in the second sentence of section 191.53(e)(2) to same condition drawback should be removed because the subject is covered by Subpart N.

Analysis:

Customs disagrees because this section deals with exporter's summary procedure, and we want to make it clear that this procedure can be used with same condition drawback as well as with manufacturing drawback.

Comment:

The reference in section 191.53(e)(3) to a "chronological summary" should be removed because the requirement causes needless, excessive paperwork with no apparent benefit to claimants or Customs.

Analysis:

The chronological order is necessary so that the timeliness of exportation can be determined after a rapid review by the liquidator. Otherwise, it would be easy to overlook the oldest export date.

Comment:

Some of the items on the format in section 191.53(e)(3) are claimed to be unnecessary. It is suggested the phrases "Marks & Nos.", "Schedule B No.," and "Destination" be removed. The submission of all the data should not be mandatory. One commentor suggests rewording or redesigning the chronological summary because of the extensive current use of data processing and the cost of programming.

Analysis:

This comment has some merit. Customs has determined to revise the language of section 191.53(e)(3) to provide that the format shall be acceptable to the regional commissioner and shall contain "substantially the data provided for in the following sample format."

Comment:

The last sentence of section 191.54(c) should be removed because it places a burden on the postmaster.

Analysis:

This suggestion is not adopted because Customs and the claimant want to know where a copy of the notice of exportation will be available if the exporter/claimant loses his copy. Second, the exporter or his agent, to whom the postmaster gives the original notice of exportation and one copy, may not be the drawback claimant.

Comment:

Section 191.54(c) "Certification" should be redesignated as section 191.54(a)(2) and proposed section 191.54(a), "Procedure", should be redesignated as section 191.54(a)(1).

Analysis:

Customs agrees and has so changed the revision.

Comment:

Section 191.55(b) should be amended to conform to the change made to section 191.11(c)(2) relating to other parties for whom drawback is available.

Analysis:

This suggestion is adopted.

Comment:

Section 191.55(b) should permit the applicable parties to use the exorter's summary procedure.

Analysis:

Customs agrees and is adding a reference to section 191.53 at the end of the sentence.

Comment:

Section 191.57, relating to examination of merchandise, should be removed because the language is too broad.

Analysis:

Customs disagrees. It is necessary to inform drawback claimants of Customs right to examine any merchandise to be exported with drawback.

SUBPART F

Comment:

The phrase in section 191.61, "including those issued by one Customs officer to another," should be removed. It was unclear as to what documents are being referred to.

Analysis:

Customs disagrees. The documents refer to the notice of exportation.

Comments:

Section 191.62(a)(1) should be amended to allow claimants to file documents with "any" district director, rather than "the appropriate" district director.

Analysis:

Customs disagrees. Claims should be filed with a district director under the jurisdiction of the regional commissioner where the drawback contract is filed. Each claim will be liquidated at that location unless the claimant requests the regional commissioner who has the contract on file to transfer the contract to another location where claimant indicates the claim is to be liquidated.

Comment:

After "Customs Form 7575" in section 191.62(a), add "-A, if claiming under 19 U.S.C. 1313(a), or Customs Form 7575-B if claiming under 19 U.S.C. 1313(b)."

Analysis:

Customs agrees; this addition would distinguish between and cover (a) and (b) claims.

Comment:

The reference in section 191.62(b)(2), as well as in section 191.52(a), to uncertified Customs Form 7511 should not be required if documentary evidence supports exportation.

Analysis:

Customs disagrees because Customs Form 7511 is a signed representation to Customs that exportation occurred. The evidence of exportation used to support the Customs Form 7511 (e.g., bill of lading), concerns parties other than Customs certifying receipt and exportation. The Customs Form 7511 is a document which can be the basis of criminal action under 18 U.S.C. 1001 and 18 U.S.C. 550.

Comment:

The examples should be removed from section 191.62(c)(1) and (c)(2).

Analysis:

Customs disagrees. In this instance, the examples are beneficial.

Comment:

Section 191.65(a), referring to when certificates of delivery are required, should specifically set out that these certificates are to be used to record transfers of same condition drawback merchandise.

Analysis:

Although section 191.145 (redesignated as section 191.141(e)), provides that the provisions relating to direct identification drawback apply to same condition drawback when not inconsistent, we believe this comment has merit. Therefore, in the last sentence of that section, a specific cross-reference to section 191.65 is being added.

Comment:

Section 191.66 should emphasize the fact that the principal needs to submit only a certificate of manufacture or certificate of manufacture and delivery when the principal uses agents to accomplish some or all of the manufacturing process.

Analysis:

Section 191.66(b) is being revised by adding a provision that in certain circumstances, Customs will waive the requirement for an agent to file certificates of manufacture and delivery.

Comment:

The words "prepared and executed by the importer" should be added after "Customs Form 7543" in section 191.65(a). Also, the words "prepared and executed by the manufacturer" should be added after "Customs Form 7577" in section 191.66(a).

Analysis:

Customs disagrees. Both forms are self-explanatory concerning how they should be completed.

Comment:

In section 191.66(f)(1), the "-B" after "Customs Form 7577" should be deleted.

Analysis:

Customs agrees and is making the change.

Comment:

A question was raised whether the phrase "evidence of clearance" means the same as "evidence of exportation."

Analysis:

The meanings are the same. Customs believes the new reference to "clearance" is a better choice of words.

SUBPART G

Comment:

Courtesy notices should be issued for all drawback liquidations. Bulletin notices should be coded to differentiate between payments of accelerated drawback and final liquidation.

Analysis:

Courtesy notices are generated from the Customs Headquarters Data Center and are issued at the time of each drawback liquidation. However, the courtesy notice is not generated for accelerated payments. Section 159.9(d), Customs Regulations, states that Customs will endeavor to provide importers or their agents with a courtesy notice. We include drawback claimants who have liquidated claims because notices are generated for all liquidations. However, because accelerated payments are not liquidations, these payments are not posted as bulletin notices.

Comment:

There should be a provision added to section 191.71 to cover a situation when the drawback liquidator is unable to secure the import entry. It is suggested that if Customs is unable to secure import entries necessary for liquidations within 6 months after the claim is filed, the claimant has the right to reconstruct the entry.

Analysis:

In such instances, reconstruction of the import entry by the importer or claimant would be the basis for liquidation in accordance with section 191.71. However, this matter is better discussed in a manual supplement to Customs officers rather than in the regulations.

Comment:

In section 191.71(d), there should be a cross-reference in section 159.1 wherein the term "liquidation" is defined.

Analysis:

Customs believes that this cross-reference is unnecessary.

Comment:

The heading and language of section 191.71(e)(1) are confusing and should be clarified.

Analysis:

This comment has merit. The section heading is being changed to read "Distribution and value for multiple products." In section 191.71(e)(1), the phrase "manipulation of imported" is being removed and the phrase "manufacture or production of" is being added in its place.

Although 19 U.S.C. 1313(a) refers to "manipulation," this term may be confusing. Under the statute, a manufacture or production must occur. Because the exported articles may be manufactured

with imported or domestic merchandise or a combination thereof, unless the word "imported" is deleted, claimants may feel relative values do not apply when domestic merchandise is used to produce the exported articles.

Comment:

Similar suggestions for clarification were made concerning section 191.71(e)(2). Additionally, there should be a reference in section 191.71(e)(2) to 19 U.S.C. 1313(b).

Analysis:

This comment has merit. The suggestion relating to 19 U.S.C. 1313(b) is being adopted by removing the reference to 19 U.S.C. 1313(a). Therefore, section 191.71(e)(2) is being amended to read:

> (2) *Value.* The values to be used in computing the distribution of drawback where two or more products result from the manufacture or production of merchandise under drawback conditions shall be the market value unless another value is approved by Customs.

Comment:

Section 191.72(b) should be clarified to indicate that when unliquidated accelerated drawback amounts in claims filed (rather than actual claims as proposed), exceed the estimated amount of accelerated drawback to be received over the bond period, the regional commissioner is to demand additional coverage.

Analysis:

Customs agrees. Therefore, in the last sentence of this section, the word "actual" is being removed and the words "outstanding unliquidated" are added in its place. This will emphasize that only unliquidated entries can be charged against the estimated total accelerated drawback during the bond period when the regional commissioner must decide whether to demand additional coverage.

Comment:

The language should be changed in section 191.72(d) so that regional commissioners shall deny the privilege to receive accelerated drawback to those claimants who "consistently" file claims in excess of the amount due.

Analysis:

Customs disagrees. The operative word currently in that section is "repeatedly." "Consistently" would require a finding by the regional commissioner that the claimant uniformly and always files overclaims. "Repeatedly" implies a frequency of overclaims to the point that the revenue is threatened, but does not require constant and uniform filings of overclaims.

Comment:

The language of section 191.72(d) should be changed in part to read "accelerated payment will be denied to claimants who are repeatedly delinquent in remitting excess-payments received."

Analysis:

To do so would allow claimants repeatedly to file overclaims and retain the privilege of accelerated drawback as long as the overpayments they receive are promptly returned to the Government. Thus, they would be getting interest free loans. Additionally, the words "the right to receive" appear to be misleading and are being removed.

Comment:

Section 191.73(a) should provide that an importer may reserve the right to drawback.

Analysis:

Customs believes that the section should not be changed. However, it is noted that drawback may be assigned to an importer under section 191.73(b).

Comment:

The phrase in section 191.73(a) "at the time of sale or consignment of the articles" should be removed.

Analysis:

Customs agrees. Reservation of the right to drawback may be made at a time other than at the time of sale or consignment. Therefore, the phrase is being deleted.

Comment:

An example (such as "The undersigned hereby authorizes, etc. ——————— (claimant) to receive drawback * * *") should be included in 191.73(b).

Analysis:

Customs believes that an example is not necessary in this case.

SUBPART H

No comments.

SUBPART I

Comment:

Section 191.93(e)(1) should be amended to include those activities which confer eligibility for drawback on supplies laden aboard vessels.

Analysis:

Customs disagrees because the activities are included on Customs Form 7514.

Comment:

Because of the multitude of ladings of fuel on foreign-bound aircraft by single suppliers who now must list each aircraft or vessel on the reverse of Customs Form 7514, section 191.93(j)(2) should be amended to provide the composite notice required by this section to list only the total amount of fuel laden during a calendar month.

Analysis:

Customs is unable to adopt this suggestion. Each form must be signed by the owner or operator of the vessel or aircraft who has "knowledge of the facts" that the fuel was laden and is to be used in foreign travel, as provided in section 191.93(j)(3). Owners and operators would be unable to complete the "Declaration of Master or other Officer" as required on this form if the form covers fuel ladings on many aircraft or vessels which (1) are not listed on the form and (2) are not owned by the person or agent completing the form. The person supplying the fuel in most instances involving aircraft is not the owner or operator of the aircraft.

### SUBPART J

No comments.

### SUBPART K

Comment:

Section 191.113(a), does not conform to the language of 19 U.S.C. 1313(g), in discussing the materials which are eligible for drawback under that provision.

Analysis:

The language after the phrase "and not" is to conform to rulings which have held that "repair" of a vessel was not the "construction" thereof, and that certain furnishings, luxury items and the like, not a part of the vessel nor necessary by law or regulation for the safe operation of the vessel, cannot be the subject of drawback.

Customs rulings follow the intent of Congress. If an article is not attached to, or made a part of, a vessel or is merely placed aboard the vessel and not required for safe operation of the vessel or safety of the crew, Congress did not intend that it be the subject of drawback.

### SUBPART L

No comments.

### SUBPART M

Comment:

Section 191.131(a) should be amended to include foreign trade zones.

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Analysis:

Customs disagrees because merchandise in a foreign trade zone is not the type of Customs custody to which this section relates.

Comment:

The proposed reduction of the period of time in which to file a bill of lading in section 191.136(a) from 2 years to 6 months is too short. This limitation could cause problems, and therefore it is suggested that a provision be added to permit an extension. Under paragraph (d), it is suggested that the definition of "bill of lading" be included in this section.

Analysis:

Under section 191.136(a), Customs agrees that a longer period of time is needed. Therefore the "6 months" will be changed to read "2 years." With this change, no extension should be needed and an extension would not be granted. C.S.D. 82-59 describes in detail the three principal types of bills of lading and their use. Therefore, no addition to paragraph (d) is needed.

SUBPART N

General Statement. Customs received considerable comments objecting to the proposed regulations on same condition drawback. Commenters' objections related to provisions on the operational time frames, examination of the merchandise, and legal issues. It is claimed that the proposal makes it almost impossible to claim drawback.

The title of Subpart N, "Same Condition Drawback" is misleading because that subpart also discusses rejected merchandise under 19 U.S.C. 1313(c).

Analysis:

Customs agrees and has revised the title of Subpart N to read "Same Condition and Rejected Merchandise Drawback." The section numbers under Subpart N have been redesignated to conform to this change.

Comment:

Section 191.141(a) (redesignated as section 191.141(a)(1)) should be rewritten to emphasize that imported merchandise destroyed under Customs supervision need not be in the same condition.

Analysis:

Customs believes the legislative history is clear that when destroyed, the merchandise must be in the same condition as when imported. This is clear from the intent of law. If it were not so, anyone could import an article, allow it to deteriorate, and then receive drawback. The same importer could put the article to its intended use which is prohibited by the statute (see C.S.D. 81-222 of

May 27, 1981, Vol. 15, Cus. Bul. p. 1171) and then claim the article had merely deteriorated and not used prior to destruction.

Comment:

Subpart N should provide that certificates of delivery are acceptable for same condition drawback.

Analysis:

Customs has so stated this in rulings, and Subpart N specifically states that were applicable, the provisions for manufacturing drawback apply to same condition drawback. Moreover, section 191.142(a), (redesignated as section 191.141(b)(1)), states transfers will be documented by certificate of delivery.

Comment:

Subpart N should incorporate a definition of "same condition," in addition to "use." Operations, which do not constitute a use should leave the article in its same condition. This commenter also asked if all processes not amounting to a process of manufacture leave an article in its same condition.

Analysis:

"Use" is defined in section 191.141(c), (redesignated as section 191.141(a)(3)). However, questions relating to "same condition" are more properly the subject of Customs rulings rather than the regulations.

Comment:

Section 191.142(a), (redesignated as section 191.141(b)(1)), should be changed to permit the same condition claim to be filed with any Customs officer at the port of exportation rather than with "any district director."

Analysis:

This comment has merit. Therefore, this section is being amended by removing "with any district director" in the first sentence and adding in its place, * * * "with the regional commissioner, or the district (area) director or port director, if authority has been delegated to that official by the regional commissioner."

Comment:

Section 191.142(a), (redesignated as section 191.141(b)(1)), should be amended by removing the word "certify" in the third sentence, and adding the word "state" in its place.

Analysis:

Customs disagrees. The claimant is required to certify by signature on an affidavit attesting to the condition of the merchandise to be exported.

Comment:

The last sentence of section 191.142(a), (redesignated as section 191.141(b)(1)), should be changed to, "* * * Transfer when the claimant is not the importer shall be documented by the use of certificates of delivery attached to Customs Form 7539."

Analysis:

Customs disagrees. The proposed sentence is satisfactory.

Comment:

Other comments on section 191.142 included:

There is no intent in the same condition drawback statute that prior notice of exportation and examination of same condition merchandise are required to obtain the benefits of that law. Prior notice and filing requirements will limit, or may eliminate, potential same condition drawback claimants. Although exporter's summary procedure obviates prior notice of exportation, many claimants may not qualify for this procedure. Filing documents prior to exportation is unrealistic and was not contemplated by the law. Prior notice and examination for same condition drawback is too stringent a procedure. There should be no prior notice of same condition drawback.

The 12-working day filing period in section 191.142(b), (redesignated as section 191.141(b)(2)), is too long and should be shortened to 5 days or 3 days. District directors should have authority to give a blanket waiver of the prior notice requirement. It is suggested that after a certain period of time, a claimant, operating under the summary procedure or generally under the same condition drawback regulations, and who has made a certain number of claims without incident, should be relieved of the requirement of prior notice.

Commenters stated that no examination of any kind, as discussed in sections 191.142 (c)(1) and (c)(2), (redesignated as sections 191.141 (b)(3)(i) and (b)(3)(ii)), should be required as this was never contemplated by the statute. Subsection (b)(3)(ii) should be completely removed and the following added in its place: "The Customs officer at the port of export may examine any merchandise to be exported with drawback." Examination for same condition drawback as drafted is too stringent.

Alternatives to the examination requirement were suggested. The 10 days afforded the district director to inform the claimant whether examination would be required should be shortened to 3 days or less. The district director should be given the authority to give a blanket waiver of examination to claimants.

If examination is required, it should be conducted with the same frequency as the immediate delivery examinations with imported merchandise, (i.e. not more than 10 percent examination, with such examination to be evenly and randomly accomplished). Section 191.142(c)(2) (redesignated as section 191.141(b)(3)(ii)) and 191.142(b),

(redesignated as section 191.141(b)(2)), should be amended to read: "filed with the Customs officer at the port of examination not later than the date of exportation and not sooner than 12 working days prior to exportation."

Analysis:

Although the phrases "prior notice" or "prior filing" and the word "examination" are not statutory, Customs believes that some steps are necessary to avoid revenue losses, and there should be some method to handle the many contemplated exportations. Customs agrees that its operational guidelines and the proposed regulations proved to be too restrictive, although Customs has the authority to promulgate such "rules and regulations" under 19 U.S.C. 1313(k).

Customs has determined that regional commissioners (or their delegates) should be given authority to grant blanket waivers of the prior notice requirement. Of course, the prior notice waiver notwithstanding, Customs has the right to examine any merchandise prior to exportation. Claimants who do not qualify for exporter's summary procedure, or who do not wish to use that procedure, should be allowed to export merchandise under same condition drawback without prior notice under certain circumstances.

Therefore, Customs is revising proposed section 191.142(b), (redesignated as section 191.141(b)(2)) by further subdividing this redesignated section into paragraphs 191.141 (b)(2)(i) and (b)(2)(ii) to provide for:

1. Filing of Customs Form 7539 at least 5 working days prior to the date of intended exportation unless Customs approves a shorter period; and
2. Waiving of prior notice by the appropriate Customs officer in his discretion at any time, or mandatory waiving if the exporter/claimant files 6 consecutive claims free of substantial error, provided further that such exporter/claimant has operated under the same condition program a minimum of 6 months.

Customs also is revising the language of proposed section 191.142 (c)(1) and (c)(2), redesignated sections 191.141 (b)(3)(i) and (b)(3)(ii)), by:

1. Changing the proposed 10 working day notice requirements to 3 working days; and
2. Changing the proposed 10 working day examination requirement to 5 working days.

Furthermore, Customs is:

3. Adding a new section 191.141(b)(3)(iii) relating to examination procedures to be used by Customs; and
4. Removing proposed section 191.142 (d)(1) and (d)(2).

Comment:

Sections 191.143 should be amended to allow 3 years after exportation for filing and completing the same condition drawback claims.

Analysis:

This comment has merit, and Customs is so revising proposed section 191.143 (redesignated as section 191.41(c)).

Comment:

Section 191.44 also should be amended to allow 3 years after exportation for filing and completing the same condition drawback claims.

Analysis:

Customs also is revising section 191.144 (redesignated as section 191.141(d)) to accomplish this. Furthermore, the reference in the second sentence of redesignated section 191.141(d) to Customs Form 7539 is being removed because a completed entry includes more than this form.

Comment:

Section 191.146(a) should be clarified as to the destruction of the merchandise under same condition drawback.

Analysis:

This comment has merit. This section (redesignated as section 191.141(f)(1)) is being so revised.

Comment:

The requirement in section 191.146(a) that claimants certify the merchandise is in the same condition and was not used prior to destruction is not consistent with the law. It is claimed that there is no requirement that the merchandise be in the same condition at the time of destruction.

Analysis:

The statutory language and the legislative history make it clear that if a claimant uses destruction in place of exportation to claim same condition drawback, in order to do so, at the time of destruction, the merchandise must be in the same condition as when imported. If there were no such requirement, anyone could import an article, change its condition by any method, then destroy the article and claim drawback. Certifying that the merchandise is in the same condition at the time of destruction is no different than such certification on the Customs Form 7539 prior to exportation. We require such certification so that if and when examination is waived, or if a claimant is given a waiver of prior notice, he will be not likely to run afoul of 18 U.S.C. 550 or 18 U.S.C. 1001 by filing a false affidavit. Requiring such certification is permitted by 19 U.S.C. 1313(k).

Comment:

In section 191.147, accelerated drawback should apply to same condition drawback.

Analysis:

This is correct and is in accordance with T.D. 81-242, dated September 4, 1981. Further, Subpart N states in 191.145, (redesignated as section 191.141(e)), that the provisions relating to direct identification drawback shall apply to claims for drawback under same condition, provided the provisions do not conflict. Nevertheless, because section 191.72(a) refers only to Subpart F, that section is being revised by adding a cross-reference to Subpart N.

Comment:

Section 191.147(a) should be amended to provide that drawback claims should be liquidated within 60 days rather than "as determined by the regional commissioner."

Analysis:

Section 209 of Pub. L. 95-410 added a new section 504 to the Tariff Act of 1930 (19 U.S.C. 1504), setting forth time frames for the liquidation of entries, or withdrawals of merchandise for consumption. However, this section does not apply to the liquidation of drawback entries. Customs believes no time limit should be imposed.

Comment:

The regulations should provide that if a drawback liquidator determines that a drawback claim is incomplete, he must notify the drawback claimant and afford the claimant an opportunity to substantiate the validity of the claim before it is liquidated.

Analysis:

Customs believes this suggestion has merit. Therefore proposed section 191.147. (redesignated as section 191.141(g)) is being revised by:

(1) Redesignating proposed paragraph (a) as paragraph (1);

(2) Adding a new paragraph (2) to incorporate the substance of the commenter's suggestion; and

(3) Redesignate proposed paragraph (b) as paragraph (3).

Comment:

Section 191.148(a)(2) should not state that rejected merchandise drawback under 19 U.S.C. 1313(c) is a limited form of same condition drawback under 19 U.S.C. 1313(j). Rejected merchandise should be treated as a separate statutory and drawback concept.

Analysis:

Customs agrees that the language of this proposed section may be misleading. Customs recognizes the separate statutory authority of both same condition and rejected drawback. Proposed section

191.148(a)(2), (redesignated as section 191.142(a)(2)), is being revised merely to indicate rejected merchandise may be the subject of a same condition drawback claim.

Comment:

There is no time limit specified for filing a rejected merchandise claim in section 191.148(b) (1) or (2). The question is raised whether the limit is the same as for the same condition drawback.

Analysis:

To claim drawback for rejected merchandise, the claimant must file Customs Form 7539, which contains details of the alleged failure to meet specifications, at the time the merchandise is returned to Customs custody. Customs must examine the merchandise to determine if in fact it does not meet specifications or was shipped without the consent of the consignee. The claimant is required to file the entry at the time the merchandise is returned to Customs, so he is under a time limit.

Proposed section 191.148(b)(1), (redesignated as section 191.142(b)(1)), is being clarified to emphasize this point.

Comment:

The phrase "reasonable extensions" in section 191.148(b)(4) is too broad.

Analysis:

Customs disagrees. Customs Headquarters and the field offices review each request on a case-by-case basis in determining whether to grant an extension and the length any extension granted. The phrase provides Customs with sufficient latitude in setting the extension.

Comment:

No examination should be required under 19 U.S.C. 1313(c).

Analysis:

Although that section does not explicitly mention examination, it does require that merchandise be returned to Customs custody "for exportation." Unless Customs can examine the merchandise, we cannot determine whether in fact it does not meet specifications. This was the intent of Congress in requiring the return of the rejected merchandise.

Comment:

Section 191.148(b)(5) requires the exporter/claimant of rejected merchandise to establish the fact of exportation described in section 191.52, (as revised in this final rule), which requires a notice of exportation supported by a bill of lading. Currently, section 22.33(f), Customs Regulations, requires only the bill of lading.

Analysis:

Customs agrees and believes it is unnecessary to require additional paperwork for rejected merchandise claimants, especially since the merchandise is returned to Customs custody prior to exportation. Therefore, proposed section 191.148(b)(5), (redesignated as section 191.142(b)(5)), is being revised to indicate that if a bill of lading is provided Customs, no notice of exportation is required.

SUBPART O

Comment:

Subpart O should be amended to give alcoholic beverages the same status as domestic alcohol under 19 U.S.C. 1313(d).

Analysis:

Prior to 1959, the Internal Revenue Code treated domestic alcohol and distilled spirits differently. As a result, Customs did (and still does) not consider whiskey, brandy, rum, etc. as "domestic alcohol." 19 U.S.C. 1313(d) allows drawback only on domestic alcohol.

In 1959, the Internal Revenue Code was amended to allow drawback under the concept that any product of a distilled spirits plant for beverage use was eligible. However, at that time, 19 U.S.C. 1313(d) was not amended by the Congress. Therefore, Customs still holds that in order to come under the first paragraph of 19 U.S.C. 1313(d), the "alcohol" used must be "Spirits distilled at more than 160 degrees of proof, which lack the taste, aroma, and other characteristics generally attributed to whiskey, brandy, rum, or gin, and which are substantially neutral in character * * *", as defined in 27 CFR 19.597(a)(1).

Comment:

Section 191.158, allows the claimant 90 days to export the unmarketable distilled spirits from the date of acceptance of the drawback entry, the time period being conclusive unless a written request is made for additional 90 days. The commenter notes this time frame does not apply in Subpart N to rejected merchandise other than distilled spirits.

Analysis:

Section 191.158 tracks the present internal revenue regulations applicable to unmarketable distilled spirits. Customs administers the payment of drawback for unmarketable spirits. Under 19 U.S.C. 1313(c), the rejected merchandise must not meet sample or specification at the time of importation. Unmarketable spirits may be perfect at importation, but become unmarketable after importation. Rejected merchandise provisions and unmarketable spirits provisions are two different drawback concepts and are handled differently. If an importer wishes to receive drawback on the *duty* paid on distilled spirits, he must apply and meet the standards of

19 U.S.C. 1313(c) and the requirements of those attendant regulations. Subpart O refers only to internal revenue taxes.

Comment:

The statute authorizing refund of internal revenue taxes on distilled spirits which are unmarketable, (26 U.S.C. 5062(c)), requires the Secretary to "refund, remit, rebate, or credit" but does not refer to "drawback." The benefit authorized by 26 U.S.C. 5062(c) does not meet the definition of "drawback" as stated in section 191.2. To define drawback as "in refund * * *" would not be appropriate as applied to the Internal Revenue Code. It is suggested that these regulations be included with other regulations dealing with a refund and for a cross-reference be put in Part 191. Alternatively, section 191.0, ("Scope"), might be expanded to include certain refunds, etc.

Analysis:

Customs believes no change is necessary.

Customs definition of "drawback" is a refund of duties and internal revenue tax paid, etc. Also, the definition of "duties" in the present regulations includes internal revenue taxes. Notwithstanding the enabling legislation's reference to "refund, remit, etc.," the return of those taxes paid under 26 U.S.C. 5062(c) fits our definition of "drawback." Because Customs is the agency refunding those taxes, we prefer to call it "drawback."

Comment:

Under 26 U.S.C. 5062(c) only the importer may receive the refund of internal revenue taxes for unmerchantable spirits provided under Subpart O. Therefore, it should be made clear that the term "exporter/claimant" in section 191.148(b) can refer only to the importer for purposes of Subpart O.

Analysis:

Under 19 U.S.C. 1313(c), to which Subpart N refers in part, the importer or consignee can apply for and receive duties for rejected merchandise. Therefore, should a claimant under 26 U.S.C. 5062(c) wish to receive the *duty* paid as drawback, such claimant need not be the importer but could be the consignee and must meet the burden of proof under Subpart N. A consignee also may obtain internal-revenue taxes under 19 U.S.C. 1313(c) or 1313(j) provided he meets the requirement of the applicable regulations in Subpart N. However, the comment with respect to Subpart O is correct and therefore sections 191.152, 191.153(b) and 191.158 are being amended so that the export/claimant can be only the importer.

SUBPART P

Comment:

There should be included in section 191.163(a) the phrase "including foreign trade zones" after "* * * on articles manufactured or produced in the United States * * *"

Analysis:

This is superfluous inasmuch as foreign trade zones are in the United States. Anything manufactured or produced in a zone is manufactured or produced in the United States.

## Other Changes

1. T.D. 82-204 (47 FR 49355, Nov. 1, 1982), made extensive revisions to the Customs Regulations relating to bonded warehouses. Sections 22.28(d), Customs Regulations, was so amended. Therefore, to conform to T.D. 82-204, it is necessary to amend the parallel section in the revision to 22.28(d) which is section 191.133(c).

2. To conform the Customs Regulations to the changes made by the removal of Part 22, Customs Regulations, and the addition of new Part 191, Customs Regulations, the notice document proposed to amend Parts 7, 10, 113, 145, and 158. Subsequent to the publication of the proposed revision on August 26, 1982, section 7.8, Customs Regulations, was amended by T.D. 83-7 (48 FR 228, January 4, 1983), by removing the parenthetical phrase at the end of that section. Therefore, there is no need to further amend section 7.8 in this document.

3. Section 22.20a, and its parallel section 191.72, relating to accelerated payment of drawback claims, provides that a claimant, requesting accelerated payment of a claim, shall submit with the claim a computation of the amount thereon, and shall also file with Customs for approval by the regional commissioner, a bond on either Customs Form 7609 or 7611. Part 113, Customs Regulations, however, provides for approval of bonds by the Commissioner of Customs and the district director, but does not provide for approval of bonds by the regional commissioner. Specifically, section 113.14(x)(1), relating to single entry bond, Customs Form 7609, for Accelerated Payment of Drawback (Single Entry), and section 113.14(x)(2), relating to term bond, Customs Form 7611, for Accelerated Payment of Drawback (term), are subject, after execution, to approval by the district director. To remove this inconsistency between Parts 22 (and Proposed Part 191) and Part 113 as well make other technical clarifications, this document amends by revising, adding, and removing the following provisions to provide that authority for approval or rejection of accelerated drawback payment shall remain with the regional commissioners:

1. Section 191.72(b), (revised);

2. Subpart B—"Classes and Approval of Bonds" in the index to Part 113, (revised);

3. Section 113.11(b), (revised);
4. Section 113.13a, (new);
5. Sections 113.14 (x)(1) and (x)(2), (removed);
6. Section 113.16, (revised); and,
7. Section 113.18, (revised).

## Removal From Regulations

The following sections of Part 22 are removed from the revision:

1. Sections 22.6 (a), (b), (c), and (d), relating to general drawback rates;
2. Section 22.6(e), relating to bags and meat wrappers;
3. Section 22.6(f), relating to sugars and syrups;
4. Section 22.6(g), relating to linseed oil;
5. Section 22.6(g–1), relating to crude petroleum and petroleum derivatives;
6. Section 22.6(h), relating to piece goods;
7. Section 22.6(i), relating to fur skins and fur skin articles;

By removing from the revision the sections set forth in numbers 2–7 above, however, no member of the public would be forfeiting any rights and benefits. Questions concerning these substantive areas, which may arise in the future, may be addressed by a request for a ruling pursuant to Part 177, Customs Regulations (19 CFR Part 177). A drawback proposal may be submitted pursuant to Subpart B. Also, Customs Headquarters will publish as Treasury Decisions, as it has already done so in some cases, general drawback contracts under Subpart D on the above sections.

## Editorial Changes

Throughout the revision, numerous editorial changes have been made to clarify and simplify the language contained in the drawback regulations, as well as correct typographical errors.

## Conforming Changes

Various parts of Chapter I, title 19, Code of Federal Regulations, have sections which contain cross-references to Part 22. This document amends those sections of the Customs Regulations by conforming the cross-references found therein to new Part 191.

## Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. An analysis of this determination is appended hereto.

## Regulatory Flexibility Act

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601, *et seq.*), it is hereby certified that the revision of Part 22 will not have a significant economic

impact on a substantial number of small entities. An analysis of this determination is appended hereto.

### Paperwork Reduction Act

Pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), this document is subject to review by the Office of Management and Budget (OMB). The proposed revision, approved by OMB, was assigned No. 1515–0094.

### Drafting Information

The principal author of this document was Charles D. Ressin, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

### List of Subjects in 19 CFR Part 191

Customs duties and inspection, exports, imports, claims, drawback.

### Amendments to the Regulations

Chapter 1, "United States Customs Service," of Title 19, Code of Federal Regulations (19 CFR Chapter 1), is amended as set forth below.

William von Raab,
*Commissioner of Customs.*

Approved: September 21, 1983.
John M. Walker, Jr.,
*Assistant Secretary of the Treasury.*

[Published in the Federal Register, October 14, 1983 (48 FR 46740)]

### Part 22—Drawback [Removed]

Chapter I of title 19, Code of Federal Regulations, is amended by removing Part 22.

Chapter I of title 19, Code of Federal Regulations, is further amended by adding a new part, Part 191, to read as follows:

## Part 191—Drawback

SUBPART H—INTERNAL REVENUE TAX ON FLAVORING EXTRACTS AND MEDICINAL OR TOILET PREPARATIONS (INCLUDING PERFUMERY) MANUFACTURED FROM DOMESTIC TAX-PAID ALCOHOL

191.81 Drawback allowance.
191.82 Procedure.
191.83 Additional requirements.
191.84 Alcohol, tobacco and firearms certificates.
191.85 Liquidation.
191.86 Amount of drawback.

SUBPART I—SUPPLIES FOR CERTAIN VESSELS AND AIRCRAFT

191.91 Drawback allowance.
191.92 Procedure.
191.93 Drawback notice of lading.
191.94 Drawback entry.

SUBPART J—MEATS CURED WITH IMPORTED SALT

191.101 Drawback allowance.
191.102 Procedure.
191.103 Refund of duties.

SUBPART K—MATERIALS FOR CONSTRUCTION AND EQUIPMENT OF VESSELS AND AIRCRAFT BUILT FOR FOREIGN ACCOUNT AND OWNERSHIP

191.111 Drawback allowance.
191.112 Procedure.
191.113 Explanation of terms.

SUBPART L—FOREIGN-BUILT JET AIRCRAFT ENGINES PROCESSED IN THE UNITED STATES

191.121 Drawback allowance.
191.122 Procedure.
191.123 Drawback entry.
191.124 Refund of duties.

SUBPART M—MERCHANDISE EXPORTED FROM CONTINUOUS CUSTOMS CUSTODY

191.131 Drawback allowance.
191.132 Merchandise released From Customs custody.
191.133 Continuous Customs custody.
191.134 Filing the entry.
191.135 Merchandise withdrawn from warehouse for exportation.
191.136 Bill of Lading.
191.137 Landing certificates.
191.138 Procedures.
191.139 Amount of drawback.

SUBPART N—SAME CONDITION AND REJECTED MERCHANDISE DRAWBACK

191.141 Same Condition Drawback.
191.142 Merchandise not conforming to sample or specifications or shipped without the consent of the consignee.

SUBPART O—DISTILLED SPIRITS, WINES, OR BEER WHICH ARE UNMERCHANTABLE OR DO NOT CONFORM TO SAMPLE OR SPECIFICATIONS

191.151 Refund of taxes.
191.152 Procedure.

SUBPART P—MERCHANDISE TRANSFERRED TO A FOREIGN-TRADE ZONE FROM CUSTOMS TERRITORY



**Authority:** R.S. 251, as amended, secs. 313, 624, 46 Stat. 693, as amended, 759, 77A Stat. 14; 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Headnote 11), 1313, 1624, Additional authority and statutes interpreted or applied are cited in the text or following the section affected.

**Source:** T.D. 83-212, 48 FR 46740, unless otherwise noted.

## § 191.0 Scope.

This part sets forth general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims.

SUBPART A—GENERAL PROVISIONS

## § 191.1 Authority of the Commissioner of Customs.

Pursuant to Treasury Department Order No. 165, Revised (T.D. 53654, 19 FR 7241), as amended, the Commissioner of Customs, with the approval of the Secretary of the Treasury, shall prescribe rules and regulations regarding drawback.

## § 191.2 Definitions.

(a) *Drawback.* "Drawback" means a refund or remission, in whole or in part, of a customs duty, internal revenue tax, or fee lawfully assessed or collected because of a particular use made of the merchandise on which the duty, tax or fee, was assessed or collected.

(b) *Designated merchandise.* "Designated merchandise" means imported duty-paid merchandise or drawback products identified (either physically or by accounting methods), by a drawback claimant as the basis for a drawback claim under 19 U.S.C. 1313(b).

(c) *Drawback proposal.* A "drawback proposal" means a written document executed by a manufacturer or producer which contains an offer to operate under the drawback law and regulations.

(d) *Drawback acceptance.* "Drawback acceptance" means a letter from Customs to the manufacturer or producer accepting the proposal. Regional commissioners of Customs accept proposals filed

pursuant to 19 U.S.C. 1313(a). U.S. Customs Headquarters accepts proposals in all other cases.

(e) *Specific drawback contract.* A "specific drawback contract" means the drawback proposal and the drawback acceptance. Synopses of contracts are published in the weekly "Customs Bulletin," where each contract is assigned an identifying Treasury Decision (T.D.) number.

(f) *General drawback contract.* A "general drawback contract" means a contract offer prepared by Customs and published in the "Customs Bulletin", and a letter of acceptance by anyone able to comply with its terms and conditions. Letters of acceptance to adhere to the terms shall be filed with a regional commissioner.

(g) *Drawback product.* A "drawback product" means a finished or partially finished product manufactured in the United States under a drawback contract. A drawback product may be exported with a claim for drawback, or it may be used in the further manufacture of other drawback products by manufacturers who have appropriate drawback contracts, in which case drawback is claimed upon exportation of the ultimate product. For purposes of 19 U.S.C. 1313(b), drawback products may be designated as the basis for drawback or deemed to be domestic merchandise.

(h) *Drawback entry.* A "drawback entry" means a document containing a description of, and other required information concerning, exported or destroyed articles on which drawback is claimed. Depending on the type of drawback applied for, entries are filed on Customs Form 7512, 7539, 7573, 7575, 7579, or 7585.

(i) *Drawback claim.* A "drawback claim" means the drawback entry and related documents required by these regulations which together constitute the request for drawback payment.

(j) *Direct identification drawback.* "Direct identification drawback" means drawback authorized under section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)). See section 191.4(a)(1) of this part.

(k) *Substitution drawback* "Substitution drawback" means drawback authorized under section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)). See section 191.4(a)(2) of this part.

(l) *Fungible merchandise.* "Fungible merchandise" means merchandise which for commercial purposes is identical and interchangeable in all situations.

(m) *Same kind and quality merchandise.* "Same kind and quality merchandise" means merchandise which may be substituted under substitution drawback. Fungible merchandise is always same kind and quality merchandise; however, same kind and quality merchandise is not always fungible merchandise.

(n) *Schedule.* A "schedule" means a document filed by a drawback claimant showing the quantity of imported material used or appearing in each unit of product exported with drawback or show-

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ing the different styles or the capacities of containers for the products.

(o) *Verification.* "Verification" means the examination of any and all records, (see section 162.1a(a) of this chapter), maintained by the claimant, whether or not specifically described in the claimant's proposal, which are required by the regulatory auditor to render a meaningful recommendation concerning the drawback claimant's conformity to the law and regulations and the determination of supportability, correctness, and validity of the specific claim or groups of claims being verified. Verification also includes a determination that the exported product was produced in conformity with the drawback manufacturing process, as described and approved in the claimant's proposal.

(p) *Abstract of manufacturing records.* "Abstract of manufacturing records" means a summary of original documents. A Drawback Entry and Certificate of Manufacture for Exported Articles, Customs Form 7575, or Certificate of Manufacture and Delivery Customs Form 7577, when properly completed, may serve as abstracts of manufacturer's records.

**§ 191.3 Duties subject to drawback.**

The duties subject to drawback include:

(a) All ordinary Customs duties:

(b) Dumping duties assessed under title VII, Tariff Act of 1930, as amended (19 U.S.C. 1673):

(c) Countervailing duties assessed under sections 303 and 701, Tariff Act of 1930, as amended (19 U.S.C. 1303, 1671); and

(d) Marking duties assessed under section 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c)).

**§ 191.4 Types of drawback.**

(a) *Drawback of duties and taxes.* Drawback of duties and taxes ordinarily are authorized in the following instances:

(1) *Direct identification drawback.* Drawback of duties is provided for in section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), upon the exportation of articles manufactured or produced in the United States wholly or in part with the use of imported merchandise.

(2) *Substitution drawback.* If imported duty-paid merchandise and duty-free or domestic merchandise of the same kind and quality are used in the manufacture or production of articles within a period not to exceed 3 years from the receipt of the imported merchandise by the manufacturer or producer of the articles, drawback is provided for in section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)), upon the exportation of any of the articles, even though none of the imported merchandise may actually have been used in the manufacture or production of the exported articles. The amount of drawback is the same as that which would have been allowed had the merchandise used therein been imported.

(3) *Merchandise not conforming to sample or specifications or shipped without consent of consignee.* Drawback is provided for in section 313(c), Tariff Act of 1930, as amended (19 U.S.C. 1313(c)) upon the exportation of imported merchandise not conforming to sample or specifications or shipped without consent of the consignee.

(4) *Drawback of internal-revenue taxes.* Drawback of internal-revenue taxes is provided for in section 313(d), Tariff Act of 1930, as amended (19 U.S.C. 1313(d)), upon the exportation of flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from domestic tax-paid alcohol.

(5) *Imported salt for curing fish.* Drawback of duties is provided for in section 313(e), Tariff Act of 1930, as amended (19 U.S.C. 1313(e)), on salt imported in bond and used in curing fish. (See section 10.80 of this chapter.)

(6) *Exportation of meats cured with imported salt.* Drawback of duties is provided for in section 313(f), Tariff Act of 1930, as amended (19 U.S.C. 1313(f)), in amounts of not less than $100, upon the exportation of packed or smoked meats cured in the United States with imported salt.

(7) *Material for construction and equipment of vessels and aircraft built for foreigners.* Drawback of duties is provided for in section 313(g), Tariff Act of 1930, as amended (19 U.S.C. 1313(g)), on materials imported and used in constructing and equipping vessels and aircraft built for foreign account and ownership or for the government of any foreign country, even though these vessels and aircraft may not be exported within the strict meaning of the term.

(8) *Foreign-built jet aircraft engines processed in the United States.* Drawback of duties is provided for in section 313(h), Tariff Act of 1930, as amended (19 U.S.C. 1313(h)), in amounts of not less than $100, upon the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts.

(9) *Same condition drawback.* Drawback of duties is provided for in section 313(j), Tariff Act of 1930, as amended (19 U.S.C. 1313(j)), on imported merchandise exported in the same condition as when imported, or destroyed under Customs supervision and not used within the United States before such exportation or destruction.

(10) *Supplies for certain vessels and aircraft.* Drawback of duties is provided for in section 309(b), Tariff Act of 1930, as amended (19 U.S.C. 1309(b)), on articles withdrawn from bonded warehouses, bonded manufacturing warehouses, continuous Customs custody elsewhere than a bonded warehouse, or foreign trade zones, and articles of domestic manufacture or production, which are laden as supplies upon certain vessels or aircraft of the United States or as

supplies including equipment upon or used in the maintenance or repair of certain foreign vessels or aircraft.

(11) *Merchandise exported from continuous Customs custody.* Drawback of duties is provided for in accordance with section 557(a), Tariff Act of 1930, as amended (19 U.S.C. 1557(a)), upon the exportation to a foreign country, or the shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, of merchandise upon which duties have been paid which has remained continuously in bonded warehouse or otherwise in Customs custody since importation, provided it was exported or shipped within 5 years after the date of its importation.

(12) *Merchandise transferred to a foreign trade zone from Customs territory.* Drawback of duties and taxes is provided for in accordance with the fourth proviso of section 3 of the Foreign Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81c), on merchandise transferred to a foreign trade zone from Customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage.

(b) *Refund of internal revenue taxes on imported distilled spirits, wines, or beer.* Refund, remission, abatement, or credit of internal revenue taxes paid or determined incident to importation on imported distilled spirits, wines, and beer is provided for in accordance with section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)), upon the exportation, or destruction under Customs supervision of these articles found after entry to be unmerchantable or not to conform to sample or specifications and which are returned to Customs custody.

### § 191.5 Retention of records.

All records required to be kept by the manufacturer or producer under this part with respect to drawback claims, and records kept by others to complement the records of the manufacturer or producer (see sections 191.21(a)(1) and 191.22(d) of this part), shall be retained for at least 3 years after payment of such claims.

### § 191.6 Authority to sign drawback documents.

(a) *Who shall sign.* Documents listed in paragraph (b) of this section shall be signed by one of the following:

(1) The president, a vice president, secretary, or treasurer of a corporation;

(2) A full partner of a partnership;

(3) The owner of a sole proprietorship; or

(4) Any person other than those described in paragraphs (a)(1) through (a)(3) of this section with a power of attorney. (See subpart C of Part 141 of this chapter.)

(b) *List of documents.* The following documents require execution in accordance with paragraph (a) of this section:

(1) Drawback entries.

(2) Certificates of delivery.
(3) Certificates of manufacture.
(4) Abstracts of manufacturing records.
(5) Proposals of manufacturers or producers, schedules, and supplemental schedules.
(6) Proposals of subcontractors.
(7) Letter of intention to adhere to general drawback contracts.
(8) Endorsements of exporters on bills of lading or notices of exportation.
(9) Authorizations by manufacturers, producers, exporters, or agents to pay drawback to other persons.

**§ 191.7 Protests.**

Protest procedures shall be in accordance with Part 174 of this chapter.

(Sec. 514, 46 Stat. 734, as amended; 19 U.S.C. 1514)

**§ 191.8 Time limitations.**

(a) *General time limit.* Drawback shall be allowed only if the completed article is exported within 5 years after importation of the merchandise identified or designated to support the claim.

(19 U.S.C. 1313(i))

(b) *Same condition drawback.* Drawback shall be allowed on imported merchandise if, before the close of the 3-year period beginning on the date of importation, the merchandise is exported in the same condition as when imported, or destroyed under Customs supervision, and is not used within the United States before such exportation or destruction.

(19 U.S.C. 1313(j))

(c) *Merchandise in continuous Customs custody.* Drawback shall be allowed on imported merchandise which is exported, or shipped from continuous Customs custody to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, only if exported or shipped within 5 years after the date of its importation.

(Sec. 557(a), 46 Stat. 744, as amended; 19 U.S.C. 1557(a))

**§ 191.9 Falsification of drawback claims.**

Any person who knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback upon the exportation of merchandise or knowingly or willfully makes or files any false document for the purpose of securing the payment to himself or others of any drawback on the exportation of merchandise greater than that legally due, shall be fined not more than $5,000 or imprisoned no more than 2 years, or both, and the merchandise or its value shall be forfeited.

(Sec. 550, 62 Stat. 718; 18 U.S.C. 550).

**§ 191.10 Verification of drawback claims.**

(a) *Claims.* A drawback claim filed under a drawback contract shall be subject to verification by the regional Regulatory Audit Division under the jurisdiction of the regional commissioner in whose region the claim is filed when the factory covered by the claim also is located in the same region.

(b) *Two or more factories.* If the claim selected for verification is filed in one region and one or more factories covered by the claim is located in another region, the regional commissioner selecting the claim for verification, in addition to taking the verification action provided for in paragraph (a) of this section, may forward copies of the claim and the drawback contract, and request for verification to the regional commissioners in whose regions the other factories are located.

(c) *Method.* The verifying official shall verify the claim and material set forth in the related drawback contract. Verification shall include an examination of the manufacturing records and all the accounting and financial records relating to the transaction(s).

(d) *Liquidations.* When a claim has been selected for verification, the appropriate Customs official will be notified of the claimant's identity, and liquidation will be postponed on only those claims selected for verification. Postponement will continue in effect until the verification has been completed and the appropriate Deputy Assistant Regional Commissioner (Regulatory Audit) issues a report. In the event a substantial error is revealed during the verification, Customs may postpone liquidation of all related product line claims, or in Customs discretion, all claims.

(e) *Errors in drawback proposals.*—(1) *Contracts accepted by Customs Headquarters.*—(i) *Action by regional commissioner.* If verification of a drawback claim filed under a drawback contract accepted by Headquarters reveals errors or deficiencies in the drawback proposal on which the contract was based, the regional commissioner shall furnish a copy of the audit report to Headquarters (Attention: Drawback and Bonds Branch, Office of Regulations and Rulings).

(ii) *Action by Headquarters.* A regional commissioner forwarding an audit report to Headquarters shall suspend liquidation of all drawback claims filed under the contract. Headquarters shall offer the claimant an opportunity to correct its proposal within a specified time.

(iii) *If claimant does not correct proposals.* If the claimant does not take corrective action within the prescribed time, the appropriate regional commissioner shall liquidate the claim(s) "no drawback."

(2) *Contracts accepted by regional commissioner.* The regional commissioner shall offer the claimant an opportunity within a specified time to amend proposals that are the basis of contracts

which he has accepted. If the claimant does not take corrective action within the prescribed time, the regional commissioner shall liquidate the claim(s) "no drawback."

**§ 191.11 Merchandise in which a United States Government interest exists.**

(a) *Restricted meaning of Government.* A United States Government instrumentality operating with nonappropriated funds shall not be considered a Government entity within the meaning of this section. Surety on any drawback bond undertaken by these instrumentalities will not be required.

(b) *Certificate.* With each drawback entry, except those filed pursuant to sections 313(c) and 313(j), Tariff Act of 1930, as amended (19 U.S.C. 1313 (c), (j)), the drawback claimant shall certify whether or not the merchandise concerned was sold to the United States Government.

(c) *Allowance of drawback.* If the merchandise was sold to the United States Government, drawback shall be available only to the:

(1) Department, branch, or agency of the United States Government, which purchased it; or

(2) Supplier, or any of the parties specified in section 191.73(b) of this part, provided the claim is supported by documentation signed by a proper officer of the department, branch, or agency concerned certifying that the right to drawback was reserved by the supplier with the knowledge and consent of the department, branch, or agency.

**§ 191.12 Drawback on duties paid to Puerto Rico.**

Any drawback of duties authorized under this part shall be paid from special fund 20X6587(A/R), Refunds, Transfers and Expenses of Operations, Puerto Rico, U.S. Customs Service, if the duties were originally paid into this fund (see 19 U.S.C. 1313(l)).

**§ 191.13 Guantanamo Bay, insular possessions, trust territories.**

Guantanamo Bay Naval Station shall be considered foreign territory for drawback purposes. However, under 19 U.S.C. 1313, there is no authority of law for the allowance of drawback of Customs duty on articles manufactured or produced in the United States and shipped to Puerto Rico, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

## SUBPART B—SPECIFIC DRAWBACK CONTRACTS

**§ 191.21 Drawback proposal.**

(a) *Proper applicant.* Unless operating under a general drawback contract, each manufacturer or producer of articles intended for exportation with drawback, whether a primary, intermediate, or final manufacturer or producer of the articles and whether or not the

owner of the merchandise used in the manufacture or production, shall apply for a specific drawback contract by submitting a drawback proposal. Procedures for adhering to a general drawback contract are provided in Subpart D.

(1) *Complementary recordkeeper.* Each person who keeps complementary records as provided for in section 191.22(d) of this part shall file a proposal describing these records in accordance with the procedure prescribed in this section. Complementary records may be signed by the complementary recordkeeper in accordance with section 191.6(a) of this part.

(2) *Subcontractors.* If a manufacturer or producer having a drawback contract engages a subcontractor to perform work which for drawback purposes does not constitute a manufacture or production, with the use of material which the principal plans to make the subject of a drawback claim, the subcontractor, unless operating under a general drawback contract, shall prepare a drawback proposal to establish how it will maintain the identification of the merchandise. The proposal, which is subject to the provisions of this section, is required only if the work performed by the subcontractor results in a problem in identification of the merchandise (for example, by changing its form or quantity).

(b) *Contents.* The proposal of each manufacturer or producer, complementary recordkeeper, and subcontractor shall:

(1) Describe his manufacturing operation fully and method of compliance with all requirements of the drawback law and regulations;

(2) State that the records of identification, manufacture or production, and storage prescribed in § 191.22 will be maintained; and

(3) Contain an agreement to follow the methods and keep records concerning drawback procedures.

(c) *Sample proposal.* Except for direct identification drawback, the Drawback and Bonds Branch, Office of Regulations and Rulings, Customs Headquarters, upon request, shall provide each prospective drawback applicant with a sample drawback proposal to assist the prospective applicant in preparing its submission. Sample proposals for direct identification drawback shall be provided by the regional commissioner upon request.

(d) *Submission.* Each manufacturer or producer who proposes to file for drawback exclusively under the provisions of section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), shall submit the proposal described in paragraph (b) of this section, in duplicate, to the regional commissioner where its drawback entries will be liquidated. Each manufacturer or producer who proposes to file for drawback under the provision of section 313 (b), (d), (g), or (h), Tariff Act of 1930, as amended (19 U.S.C. 1313 (b), (d), (g), (h)), or in any combination of section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), with section 313 (b), (d), or (g), shall submit the proposal described in paragraph (b) of this section, in triplicate, to

Customs Headquarters (Attention: Drawback and Bonds Branch, Office of Regulations and Rulings).

(e) *Two or more regions involved.* If drawback entries are to be liquidated at more than one regional office, the manufacturer or producer shall file two additional copies of the proposal for each additional office.

**§ 191.22 Records, storage, identification.**

(a) *Records for direct identification and other non-substitution manufacturing drawback.* (1) *General Rule.* Except for record requirements under section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)), set forth in § 191.32 of this part, each manufacturer or producer shall keep records to establish for all articles manufactured or produced for exportation with drawback:

(i) The date or inclusive dates of manufacture or production;

(ii) The quantity and identity of the imported duty-paid merchandise or drawback products used in, or, if claim for waste is waived, and there are no multiple products, the quantity and identity of the imported merchandise or drawback products appearing in the articles manufactured or produced;

(iii) The quantity and description of the articles manufactured or produced;

(iv) The quantity of waste incurred. If claim for waste is waived and the appearing in basis is used, waste records need not be kept unless required to establish the quantity of imported duty-paid merchandise or drawback products appearing in the articles; and

(v) That the finished articles on which drawback is claimed were exported within 5 years after the importation of the duty-paid merchandise.

(2) *Valuable waste.* When waste has a value and the manufacturer or producer has not limited its claims to the quantity of imported duty-paid merchandise or drawback products appearing in the articles, it shall keep records to show the factory value of the imported duty-paid merchandise or drawback products used and the factory value of the waste. In liquidating the drawback entry, the quantity of imported duty-paid merchandise or drawback products used will be reduced by an amount equal to the quantity of merchandise the value of the waste would replace.

(3) *Duty-free or domestic merchandise.* The records of the manufacturer or producer shall show the quantity, if any, of duty-free or domestic merchandise used, when these records are necessary to determine the quantity of imported duty-paid merchandise or drawback products used in the manufacture or production of the articles or appearing in them.

(4) *Filing an abstract.* The drawback claimant shall file with the entry an abstract of the records of the manufacturer or producer.

(5) *Multiple products.*

(i) *General rule.* Where two or more products result from the use of merchandise, records shall show the value of each product at the time of separation.

(ii) *Claim covering a manufacturing period.* Where the operation results in two or more products and a claim covers a manufacturing period rather than a manufacturing lot, the time of separation of the products shall be considered the entire period covered by the claim, and the value per unit of product is its weighted average market value for the period. Manufacturing periods in excess of one month may not be used without specific approval of Customs.

(b) *Storage and identification.* The merchandise and articles to be exported shall be stored in a manner which will enable the manufacturer, producer, or claimant (1) to determine, and the Customs officials to verify, the applicable import entry, certificate of delivery, or certificate of manufacture and delivery number or numbers; and (2) to identify with respect to that import entry, certificate of delivery, or certificate of manufacture and delivery, the imported duty-paid merchandise or drawback products used in the manufacture or production.

(c) *Identification of two or more lots.* Manufacturers, producers, or claimants may identify for drawback purposes commingled lots of fungible merchandise and commingled lots of fungible products by applying first-in-first-out (FIFO) accounting principles or any other accounting procedure approved by Customs.

(d) *Complementary records.* When Customs Headquarters or the regional commissioner, in appropriate cases, determines that a manufacturer or producer is unable to record all the information required for drawback, complementary records covering the information not available to the manufacturer or producer may be kept by the person(s) in the United States for whose account the products are manufactured or produced; and abstracts of these records shall be filed with the drawback entry. (See § 191.21(a)(1)).

(e) *Records and storage of merchandise by persons required to certify its delivery.*—(1) *Storage and records.* Each person required by §§ 191.65 and 191.66(d) of this part to certify the delivery of imported merchandise or drawback products shall store this merchandise and products while in his possession and maintain records to show the:

(i) Quantity, identity, and description of the merchandise or products;

(ii) Date on which the merchandise or products were received by him;

(iii) Person from whom received;

(iv) Date delivered by him to other persons; and

(v) Persons to whom these deliveries were made.

(2) *Certificate or endorsements.* These records shall be the basis of the certificates or endorsements required by §§ 191.65 and 191.66(d) of this part.

### § 191.23 Approval.

(a) *General rule.* If the required proposal(s) comply with the law and regulations, the regional commissioner in a case under section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), or Customs Headquarters in a case under section 313 (b), (d), (g), or (h), Tariff Act of 1930, as amended (19 U.S.C. 1313 (b), (d), (g), or (h)), or in any combination of section 313(a) with section 313 (b), (d), or (g), shall approve the drawback contract for a period of 15 years from the date of approval. (See § 191.26 of this part).

(b) *Two or more regions.* When a proposal under section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), shows that entries are to be filed with more than one regional commissioner, the regional commissioner at the place first listed in the proposal has the authority to approve or disapprove the contract.

(c) *Drawback entries filed before contract issued.* Drawback entries may be filed before the drawback contract covering the claim is approved, but no drawback shall be paid until contract is approved.

(d) *Payment of drawback.* After approval of the contract, drawback will be paid on articles manufactured or produced and exported in accordance with the law, regulations, and contract.

### § 191.24 Schedules and supplemental schedules.

When a drawback contract provides that drawback shall be based upon a schedule filed by the manufacturer or producer, the appropriate regional commissioner where the entry is filed or Customs Headquarters, in accordance with § 191.23 of this part, shall review, and if satisfactory, approve the drawback schedule. If the contract authorizes the filing of supplemental schedules, schedules may be revised as necessary by the holder of the drawback contract. These revised supplemental schedules, if approved by the appropriate regional commissioner, shall be used to liquidate drawback claims.

### § 191.25 Modification of contracts.

(a) *Supplemental proposals.* A manufacturer or producer desiring to modify an existing contract shall prepare a supplemental proposal in the form of the original proposal. The supplemental proposal shall contain all information necessary for a complete contract, as provided in § 191.21 of this part.

(b) *Approval.* (1) *General.* Except as provided in paragraph (b)(2) of this section, the appropriate regional commissioner or Customs Headquarters shall approve a new drawback contract pursuant to § 191.23 of this part, for a period of 15 years from the date of its approval if the supplemental proposal complies with the law and regulations.

(2) *Limited modifications.* A supplemental proposal to modify an existing contract under section 313 (b), (d), or (g), Tariff Act of 1930, as amended, which otherwise would be submitted to Customs Head-

quarters, shall be submitted to the appropriate regional commissioner for approval provided the changes covered by the modification are limited to:

(i) A change in location of the factory of the manufacturer or producer;

(ii) An additional factory at which the methods followed and the records maintained are the same as those at another factory operating under an existing drawback contract of the manufacturer or producer;

(iii) The succession of a sole proprietorship, partnership, or corporation to the operations of the manufacturer or producer; or

(iv) Any combination of the foregoing changes.

(c) *Effect.* The new drawback contract shall supersede the contract which it modifies, and the Customs official who approves the new contract shall revoke the pre-existing contract without prejudice to claims existing thereunder.

**§ 191.26 Termination or renewal.**

Drawback contracts shall terminate 15 years from the date of approval unless, prior to the expiration of each 15-year period, the manufacturer or producer in accordance with § 191.23 of this part requests the applicable regional commissioner or Customs Headquarters to renew the contract for another 15-year period. A contract issued under section 313(a), Tariff Act of 1930, as amended (19 U.S.C. 1313(a)), covering two or more regions, shall be renewed by the regional commissioner who approved the contract. A manufacturer or producer may terminate its contract at any time by writing to the appropriate regional commissioner or Customs Headquarters, as applicable.

## SUBPART C—USE OF SUBSTITUTED MERCHANDISE

**§ 191.31 Drawback substitution.**

The procedures set forth in subparts A and B of this part are applicable to drawback under the substitution provision (19 U.S.C. 1313(b)), except as otherwise provided in this subpart.

**§ 191.32 Records and general provisions.**

(a) *Records for substitution drawback.* The records of the manufacturer or producer of articles manufactured or produced in accordance with section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)), shall establish:

(1) The identity and specifications of the merchandise designated;

(2) The quantity of merchandise of the same kind and quality as the designated merchandise used to produce (or appearing in) the exported articles;

(3) That, within 3 years after receiving the designated merchandise at its factory, the manufacturer or producer used it in manufacturing or production and that during the same 3-year period, it manufactured or produced the exported articles; and

(4) That the completed articles were exported within 5 years after importation of the designated merchandise.

(b) *Valuable waste records.* When drawback claims are not limited to the quantity of merchandise appearing in the articles manufactured or produced for exportation with drawback, the records of the manufacturer or producer shall show the quantity and value of both the merchandise used in the manufacture or production of the articles and valuable waste incurred in order that the deduction provided for in § 191.22(a)(2) may be made in liquidation.

(c) *Exchanged petroleum.* To comply with paragraph (a)(3) of this section, the use of domestic crude petroleum exchanged for imported crude petroleum in conformity with Presidential Proclamation No. 3279 of March 10, 1959, as amended, and the Oil Import Regulations issued thereunder, shall constitute use of the imported crude petroleum provided no certificate of delivery on Customs Form 7543 is issued covering this imported crude petroleum.

(d) *Use by same manufacturer or producer at different plants.* Duty-paid merchandise or drawback products used at one plant of a manufacturer or producer within 3 years after the date on which the material was received may be designated as the basis for drawback on articles manufactured or produced in accordance with these regulations at other plants of the same manufacturer or producer.

(e) *Designation.* A manufacturer or producer may designate any merchandise which it has used in manufacturing or production.

**§ 191.33 Multiple products.**

When two or more products are produced concurrently in an operation under section 313(b), Tariff Act of 1930, as amended (19 U.S.C. 1313(b)), drawback shall be distributed to each product in accordance with its relative value at the time of separation. Where the abstract covers a manufacturing period rather than a manufacturing lot, the entire period of the abstract is the time of separation of the products and the value per unit of product is the weighted average market value for the abstract period.

**§ 191.34 Agency.**

(a) *General rule.* If an owner of imported or domestic merchandise furnishes this merchandise to an agent in accordance with a contract between the two parties, and the agent manufactures from it articles for the owner's account, the owner shall be considered as the user of the merchandise.

(b) *Contracts required.—(1) Owner's contract.* An owner of merchandise who wishes to be considered a manufacturer pursuant to paragraph (a) of this section shall apply for a drawback contract under subpart B of this part. The proposal shall describe the agency arrangement and explain how the owner and agent together will comply with the drawback law and regulations.

(2) *Agent's contract.* Each agent operating under this section must have a drawback contract covering the articles manufactured.

SUBPART D—GENERAL DRAWBACK CONTRACTS

**§ 191.41 Applicability.**

A general drawback contract is designed to simplify drawback procedures for certain common manufacturing operations but does not preclude or limit the use of drawback proposals and specific drawback contracts.

**§ 191.42 Procedures.**

(a) Customs Headquarters shall from time to time prepare and publish in the "Customs Bulletin" an offer for a general drawback contract in situations where numerous manufacturers or producers have similar operations and wish to claim drawback.

(b) Any manufacturer or producer who can comply with the terms and conditions of the published offer for a general drawback contract may adhere to it by notifying a regional commissioner in writing of its acceptance and providing him with the following information:

(1) Name and address of adherent;

(2) Factories which will operate under the contract;

(3) If a corporation, the names of officers or persons with power of attorney who will sign drawback documents on behalf of the adherent.

**§ 191.43 Acknowledgement.**

The regional commissioner shall acknowledge in writing the receipt of the letter of acceptance of the manufacturer or producer of an offer for a general drawback contract. The general drawback contract for that manufacturer or producer shall be effective for a period of 15 years from the date of the letter of acknowledgement.

**§ 191.44 Termination or renewal.**

A general drawback contract shall terminate 15 years from the date of the letter of acknowledgement unless, prior to the expiration of the 15-year period, the manufacturer or producer requests the applicable regional commissioner to renew the contract for another 15-year period. A manufacturer or producer may terminate its contract at any time.

**§ 191.45 Payment.**

Drawback will be paid on articles manufactured or produced and exported in accordance with the law, regulations, and general drawback contract.

SUBPART E—EVIDENCE OF EXPORTATION

### § 191.51 Alternative procedures.

Exportation of articles for drawback purposes shall be established by complying with one of the following procedures:

(a) Notice of Exportation, § 191.52;

(b) Exporter's summary, § 191.53;

(c) Certified notice of exportation for mail shipments, § 191.54;

(d) Notice of lading for supplies on certain vessels or aircraft, § 191.53, or

(e) Notice of transfer for articles manufactured or produced in United States which are transferred to a foreign trade zone, § 191.163.

### § 191.52 Notice of exportation.

(a) *Filing.* A drawback claimant may support the drawback claim with a notice of exportation on Customs Form 7511 for each shipment of merchandise covered by the claim.

(b) *Contents.* The notice of exportation shall show the:

(1) Name of exporting vessel or other carrier;

(2) Number and kinds of packages and their marks and numbers;

(3) Description of the merchandise, including its weight (gross and net), gauge, measure, or number;

(4) Name of the exporter; and

(5) Country of ultimate destination.

(c) *Documentary evidence of exportation.*

(1) *Notice of exportation certified by Customs at the time of exportation.* The exporter-claimant shall file simultaneously with the appropriate Customs officer, Customs Form 7511 and the shipper's export declaration or the ocean/airway export bill of lading. The Customs officer shall review both forms and determine whether the information contained therein is accurate. Upon receipt of the outbound manifest, the Customs officer shall compare that document with Customs Form 7511 to verify the facts of exportation. Upon compliance with this procedure, the Customs officer shall certify Customs Form 7511, and return the certified copy and one uncertified copy of this document to the exporter-claimant.

(2) *Uncertified notice of exportation.* An uncertified notice of exportation shall be supported by documentary evidence of exportation, such as the bill of lading, air waybill, freight waybill, Canadian Customs manifest, cargo manifest, or certified copies thereof, issued by the exporting carrier. Supporting documentary evidence shall establish fully the time and fact of exportation and the identity of the exporter.

(d) *Numbering.* Prior to filing a notice of exportation with the drawback entry, the claimant shall assign to the notice a number which shall be stamped or endorsed on the original and each copy of the notice. The number assigned shall correspond to that of the supporting document, such as the bill of lading, air waybill, or

cargo manifest, filed with the notice of exportation. If the supporting document covers more than one notice of exportation, the claimant shall assign to each notice the same number, but, each notice shall be further identified by an alphabetic designation beginning with the letter "A". It shall give a different alphabetic designation to each notice having the same number. If the supporting document has no number, it shall number consecutively each notice of exportation.

**§ 191.53 Exporter's summary.**

(a) *Eligibility.* This procedure shall be available to improve administrative efficiency.

(b) *Application.* The exporter-claimant shall request permission to use this procedure with the regional commissioner where the drawback claim will be filed, unless in cases of merchandise the subject of same condition drawback, the regional commissioner has delegated authority to approve requests to a district director. In that circumstance, the request shall be made with the district director.

(c) *Approval.* The regional commissioner, or the district director, if applicable in the case of merchandise the subject of same condition drawback, shall grant permission to use this procedure if he concludes that its use would contribute to administrative efficiency, and the exporter-claimant is not delinquent or otherwise remiss in his transactions with Customs.

(d) *Bond.* The exporter-claimant shall furnish a drawback export bond on Customs Form 7613, or shall designate rider "K" on General Term Bond, Customs Form 7595, in an amount equal to 25 percent of the drawback to be claimed on entries filed by him during the term of the bond.

(e) *Documentary evidence.*—(1) *Records.* The exporter-claimant shall maintain complete and accurate records of exportation, including the identity and location of the ultimate consignee of the exported articles. The exporter shall retain these records for at least 3 years after payment of such claims.

(2) *Additional evidence.* The exporter-claimant shall support the drawback entry with a chronological summary of the exports and any additional evidence required by Customs officers to establish fully the identity of the exported articles and the fact of exportation. In the case where the exporter-claimant uses this procedure for merchandise the subject of same condition drawback, he shall show also that the merchandise was exported in the same condition as when imported.

(3) *Format of chronological summary.* The chronological summary of the exports shall be in a format acceptable to the regional commissioner with whom drawback claims are filed and shall contain substantially the data provided for in the following sample format:

**Chronological Summary of Exports**

Drawback entry No. ————.

Exporter/claimant ————————.

Period from ———— to ————.

| Date of export | Exporting carrier | Freight or air waybill, bill of lading, manifest No. etc.[1] | Marks and numbers | Description | Net quantity | Schedule B No. | Destination |
|---|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| | | | | | | | |

[1] This number is to be used to associate the claim with exportation evidence retained by claimant.

## § 191.54 Certified notice of exportation by mail.

(a)(1) *Procedure.* If the merchandise on which drawback is to be claimed is exported by mail or parcel post, the exporter or his agent shall complete a notice of exportation on Customs Form 7511 in triplicate and file it with the postmaster at the place of mailing. The merchandise shall be delivered to the postmaster at the same time and mailed under his supervision.

(2) *Certification.* After the package is mailed, the postmaster shall certify one copy of the notice of exportation and return this copy and one uncertified copy to the exporter or his agent for subsequent filing with the drawback entry. The postmaster shall retain one copy as his record of the transaction.

(b) *Waiver of withdrawal.* A waiver of the right to withdraw a package from the mail shall be stamped or written on each package for export, signed by the exporter.

## § 191.55 Exportation by the Government.

(a) *Claim by U.S. Government.* When a department, branch, or agency of the United States Government exports products with the intention of claiming drawback, it may establish the exportation in the manner provided in §§ 191.52 or 191.53. No bond shall be required when the United States Government claims drawback.

(b) *Claim by supplier.* When a supplier of merchandise to the Government or any of the parties specified in section 191.73(b) of this part claims drawback, exportation shall be established under §§ 191.52 and 191.53.

## § 191.56 Amendment of evidence of exportation.

At any time within the 3-year period prescribed for the completion of the drawback claim, the exporter or its agent may amend a

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notice of exportation or exporter's summary, provided the regional commissioner is satisfied that the amendment is complete and correct. A written request for amendment with supporting evidence shall be submitted to the regional commissioner where the drawback entry is filed.

**§ 191.57 Examination of the merchandise.**

The district director may examine any merchandise to be exported with drawback for any reason deemed appropriate.

SUBPART F—COMPLETION OF DRAWBACK CLAIMS

**§ 191.61 Time for filing.**

A drawback entry and all documents necessary to complete a drawback claim, including those issued by one Customs officer to another, shall be filed or applied for, as applicable, within 3 years after the date of exportation of the articles on which drawback is claimed, except that any landing certificate required under section 191.67(d) of this part shall be filed within the time limit prescribed therein. Claims not completed within the 3-year period shall be considered abandoned. No extension will be granted unless it is established that a Customs officer was responsible for the untimely filing.

**§ 191.62 Filing procedure.**

(a) *Entry and certificate of manufacture.*—(1) *Customs Form 7575.* Except as provided in paragraph (a)(2) of this section, the drawback claimant shall file with the appropriate district director the drawback entry and certificate of manufacture in duplicate on Customs Form 7575-A, if claiming under 19 U.S.C. 1313(a) or Customs Form 7575-B, if claiming under 19 U.S.C. 1313(b). The district director may require an additional copy for administrative use.

(2) *Customs Form 7573.* The drawback claimant shall file with the appropriate district director the original drawback entry on Customs Form 7573 in the two instances listed below. The district director may require an additional copy for administrative use.

(i) *Certificates of manufacture filed prior to entry.* When the drawback claimant files a certificate of manufacture prior to the filing of the entry, it shall file the entry on Customs Form 7573 and refer to the certificates of manufacture in the entry by the official number instead of describing the particulars of importation and manufacture.

(ii) *Purchase of manufactured articles for exportation.* A purchaser of a completely manufactured article who exports it and claims drawback shall file an entry on Customs Form 7573 accompanied by a certificate of manufacture and delivery on Customs Form 7577, if that certificate is not already on file.

(3) *Filing in two or more regions.* If the drawback entry is filed in a region other than where the certificate of manufacture is on file, the regional commissioner with whom the certificate is on file,

after liquidation and at the request of the person filing the certificate or to whom such merchandise was delivered, shall transmit to the regional commissioner where the entry is filed an extract on Customs Form 4537. The extract shall be considered an original certificate for liquidation purposes.

(4) *Two or more shipments.* One entry may cover several shipments.

(b) *Evidence of exportation.*—(1) *Notice of exportation.* When the entry covers exports under § 191.52(c)(2) of this part, the claimant shall file with the entry one copy of the notice of exportation and the original or a certified copy of the supporting document. For an entry under §§ 191.52(c)(1) and 191.54, the claimant shall file with the entry one copy of the notice of exportation.

(2) *Evidence of right to drawback.* The notice of exportation shall show that the merchandise was shipped by the person filing the drawback entry, or shall be endorsed by the person in whose name the merchandise was shipped showing that the person filing the entry is authorized to claim drawback and receive payment.

(3) *Chronological summary of exports.* For exports under § 191.53 of this part, the claimant shall file with the entry one copy of the chronological summary of exports.

(c) *Multiple claimants.*—(1) *Notice of Exportation.* Where more than one party claims drawback (e.g., a chemical manufactured under drawback regulations is exported in a container also manufactured under drawback regulations), each drawback claimant shall file a separate notice of exportation describing the component product to which its claim will relate. Each notice shall show the name of the claimant and bear a statement that the claim shall be limited to its respective component product. The exporter shall endorse the notices, as required, to show the respective interests of the claimants. The notice of exportation shall be numbered in accordance with § 191.52(d) of this part.

(2) *Exporter's summary procedure.* Where more than one party claims the drawback (e.g., a chemical manufactured under drawback regulations is exported in a container also manufactured under drawback regulations), and the parties elect to use the exporter's summary procedure, each drawback claimant shall complete and file a chronological summary of exports for the respective component product to which its claim will relate. Each claimant shall identify in the chronological summary the name of the other claimant or claimants and the component product for which each will claim drawback independently.

(d) *Vessels or aircraft.* For drawback under section 313(g), Tariff Act of 1930, as amended (19 U.S.C. 1313(g)), the claimant shall file with the drawback entry a copy of the part of the construction contract showing that the vessel or aircraft was built for foreign account and ownership. In the case of a vessel, except a warship, the claimant also shall file a certificate of clearance for a foreign port

and a certified copy of the registry certificate or, in its place, a certificate of the consul of the foreign nation to which the vessel belongs, showing that the vessel has been documented under the flag of that country. No certificates of clearance or foreign documentation shall be required for a warship.

**§ 191.63 Summary of papers filed.**

The claimant may file with the drawback entry a summary, in duplicate, of the papers filed showing the date of application for official documents. When verified, one copy of the summary shall be receipted and returned to the claimant, and the other copy attached to the drawback entry.

**§ 191.64 Supplemental filing.**

With the permission of the regional commissioner, a claimant may amend or correct a drawback entry or file a timely supplemental entry. Corrections or amendments permitted shall be certified by the appropriate parties.

**§ 191.65 Certificates of delivery.**

(a) *When required.* If the merchandise used in the manufacture of the exported articles was not imported by the manufacturer of the articles, no drawback shall be allowed until the drawback claimant files with the regional commissioner where the claim is to be liquidated a certificate of delivery in duplicate on Customs Form 7543, or official evidence of the existence of the certificate filed at another place. The certificate of delivery must describe the merchandise delivered, tracing it from the custody of the importer to the custody of the manufacturer. If the certificate of delivery covers only one importation, the manufacturer may refer to it in its certificate of manufacture rather than describe the importation.

(b) *Intermediate transfer.* If the merchandise was not delivered directly from the importer to the manufacturer, each intermediate transfer shall be described on the certificate of delivery certified by the person through whose possession the merchandise passed.

(c) *Consignee as importer.* When the consignee named in an entry summary declares another person to be the actual owner, the consignee shall be considered the importer for drawback purposes, even though the consignee files an owner's declaration under section 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)). The drawback claimant shall file a certificate of delivery showing the initial transfer from the consignee to the person to whom delivery was made.

(d) *Warehouse transfers and withdrawals.* The person in whose name merchandise is withdrawn from a bonded warehouse shall be considered the importer for drawback purposes. No certificate of delivery is required covering prior transfers of merchandise while in a bonded warehouse.

**§ 191.66 Certificate of manufacture and delivery.**

(a) *When required.* If the imported merchandise has undergone some process of manufacture before delivery, and the wholly or partially manufactured article thereafter is used in the manufacture of some other article for exportation, or when completely manufactured articles are purchased for exportation without further manipulation, the drawback claimant, whether the manufacturer or the exporter, shall file a certificate of manufacture and delivery on Customs Form 7577.

(b) *Subcontractors.* (1) If a subcontractor performs work, which for drawback purposes does not constitute a manufacture or production, with the use of merchandise the principal plans to make the subject of a drawback claim, and (2) if there is a problem in identifying the merchandise the subcontractor returns to the principal from the merchandise received from the principal, the subcontractor shall complete a certificate of manufacture and delivery. If there is no problem of identification, the subcontractor shall complete only a certificate of delivery. If complementary records are maintained by a subcontractor's principal (see section 191.22(d)), and Customs determines no problems of identification exist, it may waive the filing of certificates of delivery and manufacture for transfers between principal and subcontractor, whether the subcontractor's operation involves manufacture or not.

(c) *Identifying certificates of manufacture and delivery.* Drawback claimants may identify the relevant certificates of manufacture and delivery on drawback entries covering the exported articles rather than describe the importation and manufacture.

(d) *Certification of intermediate transfer.* Any intermediate transfer of manufactured articles shall be certified on the certificate of manufacture and delivery.

(e) *Entry filed at place other than where certificate filed.* If the drawback entry is filed at a place other than where the certificate of manufacture and delivery is on file, the regional commissioner may transmit to the place where the drawback entry is filed an extract on Customs Form 4537.

(f) *Special requirements for agency transactions.*—(1) *Requirement of agent.* Each agent manufacturer who conducts operations under § 191.34 of this part shall furnish the principal for whom it processed merchandise a certificate of manufacture and delivery on Customs Form 7577 completing only the portion applicable to the operation so conducted, relating to the substituted or designated merchandise, and identifying the owner of the articles for whom processing was conducted.

(2) *Requirement of principal.* The principal for whom processing was conducted under section 191.34 of this part shall complete and file a certificate of manufacture or drawback entry, as appropriate, and attach to it the certificates from its agent or agents.

**§ 191.67 Landing certificates.**

(a) *When required.* A landing certificate shall be required:

(1) Whenever the district director at the port of exportation or the port where the drawback entry is filed, or the regional commissioner for the region where the drawback claim is liquidated, has reason to believe that the shipment is not a bona fide exportation;

(2) When Customs Headquarters specifically directs that the landing certificate be produced;

(3) When law or regulation otherwise requires a landing certificate; or

(4) For every aircraft which departs from the United States under its own power if drawback is claimed on the aircraft or any part thereof. A landing certificate for aircraft shall show the exact time of landing in the foreign country and describe the aircraft or parts thereof on which drawback is claimed in sufficient detail to enable Customs officers to identify them with the documentation used to establish exportation, such as the notice of exportation, bill of lading, air waybill, or other approved documentation.

(b) *Time of filing.* Any required landing certificate shall be furnished prior to the liquidation of the entry.

(c) *Signature.* Any required landing certificate shall be signed by a revenue officer of the foreign country to which the merchandise is exported, unless it is shown that the country has no Customs administration, in which case the landing certificate may be signed by the consignee or the carrier's agent at the place of unlading.

(d) *Notice of requirement.* Customs shall provide notice in writing to an exporter or its agent required to supply a landing certificate pursuant to paragraphs (a)(1) or (a)(2) of this section. The exporter or its agent shall file the landing certificate within 1 year from the date of the notice unless Customs Headquarters grants an extension.

(e) *Inability to produce landing certificates.* (1) When a landing certificate is required and cannot be produced, an application for its waiver may be made to the regional commissioner through the district director within the time required for filing the certificate, accompanied by such evidence of clearance and landing abroad as may be available. The application shall be granted if the regional commissioner is satisfied by the evidence submitted that the merchandise has been exported. If the regional commissioner is not so satisfied, he shall transmit the application and its accompanying evidence to Headquarters, U.S. Customs Service, for final determination.

(2) *Required by the district director.* When a landing certificate is required by a district director under paragraph (a)(1) of this section, he may accept other satisfactory evidence of foreign landing in place of the certificate.

SUBPART G—PAYMENT AND LIQUIDATION OF DRAWBACK CLAIMS

### § 191.71 Liquidation.

(a) *Time of liquidation.* Drawback claims may be liquidated after:

(1) Final liquidation of the import entry; or

(2) Deposit of estimated duties on the imported merchandise and before liquidation of the import entry.

(b) *Claims based on estimated duties.*—(1) *Eligibility.* Drawback may be paid on estimated duties if the import entry has not been liquidated and the drawback claimant and any other party responsible for the payment of liquidated import duties each files a written request for payment of each drawback entry, waiving any right to payment or refund under other provisions of law.

(2) *Adjustment.*—(i) *Drawback entry.* A drawback claim, once liquidated on the basis of estimated duties, thereafter shall not be adjusted by reason of a subsequent liquidation of an import entry.

(ii) *Import entry.* However, if final liquidation of the import entry discloses that the total amount of import duty is different from the total estimated duties deposited, the party responsible for the payment of liquidated duties, as applicable, shall be liable for 1 percent of all increased duties found to be due on that portion of merchandise recorded on the drawback entry or shall be entitled to a refund of 1 percent of all excess duties found to be paid on that portion of the merchandise recorded on the drawback entry.

(c) *Claims based on liquidated duties.* Drawback shall be based on the final liquidated duties paid that have been made final by the importer's written acceptance of the liquidation or by operation of law.

(d) *Liquidation procedure.* When the drawback claim has been completed by the filing of the entry and other necessary documents, and exportation of the articles has been established, the regional commissioner shall determine drawback due on the basis of the complete drawback claim and the drawback contract.

(e) *Distribution and value for multiple products.*—(1) *Distribution.* Where two or more products result from the manufacture or production of merchandise, drawback shall be distributed to the several products in accordance with their relative values at the time of separation.

(2) *Value.* The values to be used in computing the distribution of drawback where two or more products result from the manufacture and production of merchandise under drawback conditions shall be the market values unless another value is approved by Customs.

(f) *Payment.* The regional commissioner shall certify the amount of drawback due to the person making entry or other person authorized to receive payment under § 191.73 of this subpart.

### § 191.72 Accelerated payment.

(a) *Eligibility.* A drawback claimant not delinquent or otherwise remiss in transactions with Customs is eligible for accelerated pay-

ment of drawback on claims which are properly prepared and fully completed in accordance with either Subpart F or N of this part.

(b) *Submission with request.* A claimant who requests accelerated payment of a claim shall file with the claim a computation of the amount due, and, for approval by the regional commissioner, a bond on either Customs Form 7609 or 7611, guaranteeing the refund of any excess payment as provided in section 113.13a of this chapter. In place of filing Customs Form 7609 or 7611, a claimant may provide appropriate coverage by executing the approved rider "P" on a General Term Bond for Entry of Merchandise, Customs Form 7595, at the time of filing Customs Form 7595. Rider "P", whether submitted to the district director with Customs Form 7595 initially or added to that bond later, shall be approved by the regional commissioner. When a rider is to be designated on Customs Form 7595, the amount of the bond shall be increased by the estimated amount of accelerated drawback to be claimed during the term of the bond. If outstanding unliquidated accelerated drawback claims exceed the estimated amount of accelerated drawback, the regional commissioner shall require additional bond coverage.

(c) *Approval.* A regional commissioner who approves the claim for accelerated payment shall certify it for payment within 3 weeks after filing. After liquidation, the regional commissioner shall certify payment of any amount due or demand a refund of any excess amount paid.

(d) *Repeated erroneous computation of drawback claims.* Accelerated payment will be denied to claimants who repeatedly file claims in excess of the amount due.

**§ 191.73 Person entitled to receive drawback.**

(a) *Exporter; reservation by manufacturer or producer.* The person named as exporter on the notice of exportation or in bill of lading, air waybill, freight waybill, Canadian Customs manifest, cargo manifest, or certified copies of these documents, shall be deemed to be the exporter and entitled to drawback, unless the manufacturer or producer shall reserve the right to claim drawback. The manufacturer or producer who reserves this right may claim drawback, and he shall receive payment upon production of satisfactory evidence that the reservation was made with the knowledge and consent of the exporter.

(b) *Agent or person designated to receive drawback.* Drawback may be paid to the agent of the manufacturer, producer, or exporter, or to the person the manufacturer, producer, exporter, or agent directs in writing to receive drawback payment.

SUBPART H—INTERNAL-REVENUE TAX ON FLAVORING EXTRACTS AND MEDICINAL OR TOILET PREPARATIONS (INCLUDING PERFUMERY) MANUFACTURED FROM DOMESTIC TAX PAID ALCOHOL

**§ 191.81 Drawback allowance.**

(a) *Drawback.* Section 313(d), Tariff Act of 1930, as amended (19 U.S.C. 1313(d)), provides for drawback of internal-revenue tax upon the exportation of flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from the domestic tax-paid alcohol (see § 191.4(a)(4)).

(b) *Shipment to Puerto Rico, the Virgin Islands, Guam, and American Samoa.* Drawback of internal-revenue tax on articles manufactured or produced under this subpart and shipped to Puerto Rico, the Virgin Islands, Guam, or American Samoa shall be allowed in accordance with section 7653(c) of the Internal Revenue Code (26 U.S.C. 7653(c)). However, there is no authority of law for the allowance of drawback of internal-revenue tax on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced in the United States and shipped to Wake Island, Midway Islands, Kingman Reef, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

**§ 191.82 Procedure.**

(a) *General.* Other provisions of this part relating to direct identification drawback shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Manufacturing record.* The manfacturer of flavoring extracts or medicinal or toilet preparations on which drawback is claimed shall record the products manufactured, the quantity of waste, if any, and a full description of the alcohol. These records shall be available at all times for inspection by Customs officers.

(c) *Additional information required on the manufacturer's proposal.* The manufacturer's proposal shall state the quantity of domestic tax-paid alcohol contained in each product on which drawback is claimed.

(d) *Variance in alcohol content.*—(1) *Variance of more than 5 percent.* If the percentage of alcohol contained in a medicinal preparation, flavoring extract, or toilet preparation varies by more than 5 percent from the percentage of alcohol in the total volume of the exported product as stated in a previously approved proposal, the manufacturer shall apply for a new drawback contract pursuant to section 191.25 of this part. If the variation differs from a previously filed schedule, the manufacturer shall file a new schedule incorporating the change.

(2) *Variance of 5 percent or less.* Variances of 5 percent or less of the volume of the product shall be reported to the regional commissioner where the drawback entries are liquidated. The regional

commissioner may allow drawback without specific authorization from Customs Headquarters.

(e) *Customs forms.* The following Customs forms shall be used in place of the corresponding forms used in the case of articles manufactured with the use of imported merchandise:

(1) Drawback Entry for Tax-Paid Alcohol, Customs Form 7579.

(2) Certificate of Manufacture and Delivery, Customs Form 7585.

(3) Certificate of Delivery of Alcohol Tax-Paid, Customs Form 7545.

(f) *Time period for completing claims.* The 3-year period for the completion of drawback claims prescribed in § 191.61 of this part shall be applicable to claims for drawback under this subpart.

(g) *Filing of drawback entries on duty-paid imported merchandise and tax-paid alcohol.* When the drawback entry covers duty-paid imported merchandise in addition to tax-paid alcohol, the claimant shall file one set of entries for drawback of Customs duty and another set for drawback of internal-revenue tax.

(h) *Description of the alcohol.* The description of the alcohol stated in the entry may be obtained from the description on the package containing the tax-paid alcohol.

**§ 191.83 Additional requirements.**

(a) *Manufacturer claims domestic drawback.* In the case of medicinal preparations and flavoring extracts, the claimant shall file with the drawback entry, or endorse on the entry or certificate of manufacture, a declaration of the manufacturer showing whether a claim has been or will be filed by the manufacturer with the regional regulatory administrator of the Bureau of Alcohol, Tobacco and Firearms for domestic drawback on alcohol under sections 5131, 5132, 5133, and 5134, Internal Revenue Code, as amended (26 U.S.C. 5131, 5132, 5133, and 5134).

(b) *Manufacturer does not claim domestic drawback.*—(1) *Submission of statement.* If no claim has been or will be filed with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback on medicinal preparations or flavoring extracts, the manufacturer shall submit a statement, in duplicate, setting forth that fact to the appropriate regional regulatory administrator of the Bureau of Alcohol, Tobacco and Firearms for the region in which the manufacturer's factory is located.

(2) *Contents of the statement.* The statement shall show the:

(i) Quantity and description of the exported products;

(ii) Identity of the alcohol used by serial number of package or tank car;

(iii) Name and registry number of the warehouse from which the alcohol was withdrawn;

(iv) Date of withdrawal;

(v) Serial number of the tax-paid stamp or certificate, if any; and

(vi) Customs region where the drawback claim will be filed.

(3) *Verification of the statement.* The regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, shall verify receipt of this statement, forward the original of the document to the Customs region designated, and retain the copy.

**§ 191.84 Alcohol, Tobacco and Firearms certificates.**

(a) *Request.* The drawback claimant or manufacturer shall file a written request with the regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, in whose region the alcohol used in the manufacture was withdrawn requesting him to provide the regional commissioner of Customs, with whom the drawback claim will be processed, a tax-paid certificate on Alcohol, Tobacco and Firearms Form 5100.4 (Certificate of Tax-Paid Alcohol).

(b) *Contents.* The request shall state the:

(1) Quantity of alcohol in taxable gallons;

(2) Serial number of each package;

(3) Serial number of the stamp, if any;

(4) Amount of tax paid on the alcohol;

(5) Name, registry number, and location of the warehouse;

(6) Date of withdrawal;

(7) Name of the manufacturer using the alcohol in producing the exported articles;

(8) Address of the manufacturer and his manufacturing plant; and

(9) Customs region where the drawback claim will be processed.

(c) *Request accompanied by Customs Form 7545.* If the request is accompanied by Customs Form 7545 showing any of the information required by paragraph (b) of this section, that information need not be repeated in the request.

(d) *Extracts of Alcohol, Tobacco and Firearms certificates.* If a certification of any portion of the alcohol described in the Bureau of Alcohol, Tobacco and Firearms Form 5100.4 is required for liquidation of drawback entries processed in another region, the regional commissioner of Customs, on written application of the person who requested its issuance, shall transmit a copy of the extract from the certificate for use at that regional office. The regional commissioner shall note that the copy of the extract was prepared and transmitted.

**§ 191.85 Liquidation.**

The regional commissioner shall determine the amount of drawback due by reference to the certificate of manufacture and the drawback contract under which the drawback claimed is allowable.

**§ 191.86 Amount of drawback.**

(a) *Claim filed with Bureau of Alcohol, Tobacco and Firearms.* If the declaration required by § 191.83 of this part shows that a claim has been or will be filed with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback, drawback under section 313(d), Tariff Act of 1930, as amended (19 U.S.C. 1313(d)), shall be limited

to the difference between the amount of tax paid and the amount of domestic drawback claimed.

(b) *Claim not filed with Bureau of Alcohol, Tobacco and Firearms.* If the declaration and verified statement required by § 191.83 show that no claim has been or will be filed by the manufacturer with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback, the drawback shall be the full amount of the tax on the alcohol used.

(c) *No deduction of 1 percent.* No deduction of 1 percent shall be made in drawback claims under section 313(d), Tariff Act of 1930, as amended (19 U.S.C. 1313(d)).

(d) *Payment.* The drawback due shall be paid in accordance with § 191.71(f) of this part.

## SUBPART I—SUPPLIES FOR CERTAIN VESSELS AND AIRCRAFT

### § 191.91 Drawback allowance.

Section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309), provides for drawback on articles laden as supplies on certain vessels or aircraft of the United States or as supplies including equipment upon, or used in the maintenance or repair of, certain foreign vessels or aircraft (see § 191.4(a)(10)).

### § 191.92 Procedure.

(a) *General.* Other provisions of this part apply to claims filed under this subpart insofar as applicable and not inconsistent with the provisions of this subpart.

(b) *Customs forms.* Drawback notices of lading on Customs Form 7514 shall be filed in place of notices of exportation on Customs Form 7511 or other evidence of exportation (see § 191.93).

### § 191.93 Drawback notice of lading.

(a) *Number of copies and place of filing.* The notice of lading on Customs Form 7514 shall be filed in quadruplicate with the district director at the port of lading.

(b) *Time of filing.* The drawback notice of lading may be filed before or after lading of the articles. If filed after lading, the notice shall be filed within 3 years after exportation of the articles.

(c) *Contents of notice.* The notice of lading shall show:

(1) Name of the vessel or identity of the aircraft on which articles were or are to be laden;

(2) Number and kind of packages and their marks and numbers;

(3) Description of the articles and their weight (net), gauge, measure, or number;

(4) Name of the exporter; and

(5) Customs region where the drawback entry is to be filed.

(d) *Assignment of numbers and return of one copy.* The district director shall assign a number to each notice of lading and return one copy to the exporter for delivery to the master or authorized officer of the vessel or aircraft.

(e) *Declaration.*—(1) *Requirement.* The master or an authorized officer of the vessel or aircraft, or a representative of the owner or operator of the vessel or aircraft having knowledge of the facts and holding a Customs power of attorney shall complete the section of the drawback notice entitled "Declaration of Master or Other Officer," which was delivered by the exporter.

(2) *Procedure if notice filed before lading.* If the notice is filed before lading of the articles, the declaration must be completed on the copy of the numbered drawback notice that was filed with the district director and returned to the exporter for this purpose.

(3) *Procedure if notice filed after lading.* If the drawback notice is filed after lading of the articles, the drawback claimant may file a separate document containing the declaration required on the Drawback Notice, Customs Form 7514.

(4) *Filing.* The drawback claimant shall file with the district director both the drawback entry and the drawback notice or separate document containing the declaration of the master or other officer or representative.

(f) *Information concerning class or trade.* Information about the class of business or trade of a vessel or aircraft is required to be furnished in support of the drawback entry if the vessel or aircraft is American.

(g) *Vessel or aircraft required to clear or obtain a permit to proceed.* After the vessel or aircraft has cleared or obtained a permit to proceed, the district director at the port of lading shall complete the section entitled "Customs Certification" on one of the copies of the notice of lading. He shall return the completed copy and one other copy to the exporter or the person designated by the exporter for subsequent filing with the drawback entry.

(h) *Vessel or aircraft not required to clear or obtain a permit to proceed.* If the vessel or aircraft is not required to clear or obtain a permit to proceed to another port, the district director shall return to the exporter or the person designated by the exporter two copies of the notice with a statement of the facts in this case for subsequent filing with the drawback entry. The drawback claimant shall file with its claim an itinerary of the vessel or aircraft for the immediate voyage or flight showing that the vessel or aircraft is engaged in a class of business or trade which makes it eligible for drawback.

(i) *Articles laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.* The regional commissioner where the drawback claim is filed shall require a declaration or other evidence showing to his satisfaction that articles have been laden or installed or aircraft as equipment or used in the maintenance or repair of aircraft.

(j) *Fuel laden on vessels or aircraft as supplies.*—(1) *Composite notice of lading.* In the case of fuel laden on vessels or aircraft as supplies, the drawback claimant may file with the regional com-

missioner a composite notice of lading on the reverse of Customs Form 7514, for each calendar month describing all of the drawback claimant's deliveries of fuel supplies during the one calendar month at a single port or airport to all vessels or airplanes of one vessel owner or operator or airline.

(2) *Contents of composite notice.* The composite notice shall show for each voyage or flight, either on the reverse of Customs Form 7514 or on a continuation sheet:

(i) Identity of the vessel or aircraft;

(ii) Description of the fuel supplies laden;

(iii) Quantity laden; and

(iv) Date of lading.

(3) *Declaratoin of owner or operator.* A vessel or airline representative having knowledge of the facts and holding a Customs power of attorney shall complete the section "Declaration of Master or Other Officer" on Customs Form 7514.

(4) *District Director's certification.* The district director shall note the clearance of the vessel or aircraft at the end of each line relating to a voyage or flight.

(k) *Desire to land articles covered by notice of lading.* The master of the vessel or commander of the aircraft desiring to land in the United States articles covered by a notice of lading shall apply for a permit to land those articles under Customs supervision. All articles landed, except those transferred under the original notice of lading to another vessel or aircraft entitled to drawback, shall be considered imported merchandise for the purpose of section 309(c), Tariff Act of 1930, as amended (19 U.S.C. 1309(c)).

### § 191.94 Drawback entry.

The drawback entry shall be filed on Customs Form 7573 or 7575, as applicable, modified to read "lade" (or "use"), "laden" (or "used"), or "lading" (or "using") instead of "export," "exported," or "exporting." The "Declaration of Exportation" shall be amended to read as follows:

**Declaration of Lading or Use**

I, —————————— (member of firm, officer representing corporation, agent, or attorney) of —————————— declare that according to my knowledge and belief, the particulars of lading (or use) stated in this entry, the notices of lading, and receipts are correct, and that the merchandise is not to be relanded in the United States or any of its possessions, but is to be (has been) used on the vessels or aircraft so named for (state specifically, such as supplies, equipment, maintenance, or repair) ——————————, as specified in section 309, Traffic Act of 1930, as amended.

Date: —————————— 19——.

(Shipper or agent)

(Sec. 309, 46 Stat. 690, as amended; 19 U.S.C. 1309)

SUBPART J—MEATS CURED WITH IMPORTED SALT

**§ 191.101 Drawback allowance.**

Section 313(f), Tariff Act of 1930, as amended (19 U.S.C. 1313(f)), provides for the allowance of drawback upon the exportation of meals cured with imported salt (see § 191.4(a)(6)).

**§ 191.102 Procedure.**

(a) *General.* Other provisions of this part relating to direct identification drawback shall apply to claims for drawback under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Customs form.* The forms used for other drawback claims shall be used and modified to show that the claim is being made for refund of duties paid on salt used in curing meats.

**§ 191.103 Refund of duties.**

Drawback shall be refunded in aggregate amounts of not less than $100 and shall not be subject to the retention of 1 percent of duties paid.

SUBPART K—MATERIALS FOR CONSTRUCTION AND EQUIPMENT OF VESSELS AND AIRCRAFT BUILT FOR FOREIGN ACCOUNT AND OWNERSHIP

**§ 191.111 Drawback allowance.**

Section 313(g), Tariff Act of 1930, as amended (19 U.S.C. 1313(g)), provides for drawback on imported materials used in the construction and equipment of vessels and aircraft built for foreign account and ownership, or for the government of any foreign country, notwithstanding that these vessels or aircraft may not be exported within the strict meaning of the term (see § 191.4(a)(7)).

**§ 191.112 Procedure.**

Other provisions of this part relating to direct identification drawback shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

**§ 191.113 Explanation of terms.**

(a) *Materials.* Section 313(g), Tariff Act of 1930, as amended (19 U.S.C. 1313(g)), applies only to materials used in the original construction and equipment of vessels and aircraft and not to materials used for alteration or repair, or to materials not required for safe operation of the vessel or aircraft.

(b) *Foreign account and ownership.* Foreign account and ownership, as used in section 313(g), Tariff Act of 1930, as amended, means only vessels or aircraft built and equipped for the account of an owner or owners residing in a foreign country and having a bona fide intention that the vessel or aircraft, when completed, shall be owned and operated under the flag of a foreign country.

SUBPART L—FOREIGN-BUILT JET AIRCRAFT ENGINES PROCESSED IN THE UNITED STATES

**§ 191.121 Drawback allowance.**

Section 313(h), Tariff Act of 1930, as amended (19 U.S.C. 1313(h)), provides for drawback on the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts (see § 191.4(a)(8)).

**§ 191.122 Procedure.**

Other provisions of this part shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

**§ 191.123 Drawback entry.**

(a) *Filing of entry.* Drawback entries covering these foreign-built jet aircraft engines shall be filed on Customs Form 7575-A, appropriately modified, to show that the entry covers jet aircraft engines processed under section 313(h), Tariff Act of 1930, as amended.

(b) *Contents of entry.* The entry shall show the country in which each engine was manufactured and describe the processing performed thereon in the United States.

**§ 191.124 Refund of duties.**

Drawback shall be refunded in aggregate amounts of not less than $100, and shall not be subject to the deduction of 1 percent of duties paid.

SUBPART M—MERCHANDISE EXPORTED FROM CONTINUOUS CUSTOMS CUSTODY

**§ 191.131 Drawback allowance.**

(a) *General.* Section 557(a), Tariff Act of 1930, as amended (19 U.S.C. 1557(a)), provides for drawback on the exportation, or the shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, of merchandise upon which duties have been paid which has remained continuously in bonded warehouse or otherwise in Customs custody since importation (see § 191.4(a)(11)).

(Sec. 557, 46 Stat. 744, as amended; 19 U.S.C. 1557)

(b) *Guantanamo Bay.* Guantanamo Bay Naval Station shall be considered foreign territory for drawback purposes under this subpart. However, imported merchandise which has remained continuously in bonded warehouse or otherwise in Customs custody since importation is not entitled to drawback of duty when shipped to Puerto Rico, Canton Island, Enderbury Island, or Palmyra Island.

**§ 191.132 Merchandise released from Customs custody.**

No remission, refund, abatement, or drawback of duty shall be allowed because of the exportation of any merchandise after its release from Government custody, except in the following cases:

(a) When articles are exported on which drawback is expressly provided for by law;

(b) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to statute and regulations prescribed by the Secretary of the Treasury; or

(c) When articles entered under bond are destroyed within the bonded period, as provided in section 557(c), Tariff Act of 1930, as amended (19 U.S.C. 1557(c)), or destroyed within the bonded period by death, accidental fire, or other casualty, and proof of destruction is furnished to the satisfaction of the Secretary of the Treasury, in which case any accrued duties shall be remitted or refunded and any condition in the bond that the articles shall be exported shall be deemed to have been satisfied (see 19 U.S.C. 1558).

**§ 191.133 Continuous Customs custody.**

(a) *Merchandise released under an importer's bond and returned.* Merchandise released to an importer under a bond prescribed by § 142.4 of this chapter and later returned to the public stores upon requisition of the district director shall not be deemed to be in the continous custody of Customs officers.

(b) *Merchandise released under a temporary importation bond.* Merchandise released under a temporary importation bond as provided for in Schedule 8, Part 5, Subpart C, Tariff Schedules of the United States (19 U.S.C. 1202), shall not be deemed to be in the continous custody of Customs officers.

(c) *Merchandise released from warehouse.* For purpose of this part, in the case of merchandise entered for warehouse, Customs custody shall be deemed to cease when duty has been paid and the district director has authorized the withdrawal of the merchandise.

(d) *Merchandise not warehoused, examined elsewhere than in public stores.*—(1) General rule. Except as stated in paragraph (d)(2) of this section, merchandise examined elsewhere than at the public stores, in accordance with the provisions of § 151.7 of this chapter, shall be considered released from Customs custody upon completion of final examination for appraisement.

(2) *Merchandise upon the wharf.* Merchandise which remains on the wharf by permission of the district director shall be considered to be in Customs custody, but this custody shall be deemed to cease when the Customs officer in charge accepts the permit and has no other duties to perform relating to the merchandise, such as measuring, weighing or gauging.

(Sec. 557, 46 Stat. 744, as amended, 19 U.S.C. 1557)

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**§ 191.134 Filing the entry.**

(a) *Direct export.* At least 6 hours before lading the merchandise on which drawback is claimed, the importer or the agent designated by him in writing shall file with the district director a direct export entry on Customs Form 7512 in duplicate.

(b) *Merchandise transported to another port for exportation.* The importer of merchandise to be transported to another port for exportation shall file in triplicate with the district director an entry naming the transporting conveyance, route, and port of exit. The district director shall certify one copy and forward it to the district director at the port of exit. A bonded carrier shall transport the merchandise in accordance with the applicable regulations. Manifests shall be prepared and filed in the manner prescribed in § 144.37 of this chapter.

**§ 191.135 Merchandise withdrawn from warehouse for exportation.**

The regulations in Part 18 of this chapter concerning the supervision of lading and certification of exportation of merchandise withdrawn from warehouse for exportation without payment of duty shall be followed to the extent applicable.

**§ 191.136 Bill of lading.**

(a) *Filing.* In order to complete the claim, a bill of lading covering the merchandise described in the export entry shall be filed within 2 years after the merchandise is exported.

(b) *Contents.* The bill of lading shall show either that the merchandise was shipped by the person making the claim or bear an endorsement of the person in whose name the merchandise was shipped showing that the person making claim is authorized to receive the drawback.

(c) *Limitation of the bill of lading.* The terms of the bill of lading may limit and define its use by stating that it is for Customs purposes only and not negotiable.

(d) *Inability to produce bill of lading.* When a required bill of lading cannot be produced, the person making the drawback entry may request the regional commissioner, through the district director, within the time required for the filing of the bill of lading, to accept a statement setting forth the cause of failure to produce the bill of lading and such evidence of exportation and of its right to make the drawback entry as may be available. The request shall be granted if the regional commissioner is satisfied by the evidence submitted that the failure to produce the bill of lading is justified, that the merchandise has been exported, and that the person making the drawback entry has the right to do so. If the regional commissioner is not so satisfied, he shall transmit the request and its accompanying evidence to Headquarters, U.S. Customs Service, for final determination.

(e) *Extracts of bills of lading.* Regional commissioners may issue extracts from bills of lading filed with drawback entries.

**§ 191.137 Landing certificates.**

When required, a landing certificate shall be filed within the time prescribed in § 191.67 of this part.

(Sec. 557, 48 Stat. 744, as amended, 19 U.S.C. 1557)

**§ 191.138 Procedures.**

When the drawback entry has been completed and the bill of lading filed, together with the landing certificate, if required, the reports of inspection and lading made, and the clearance of the exporting conveyance established by the record of clearance in the case of direct exportation or by certificate in the case of transportation and exportation, the regional commissioner shall verify the importation by referring to the import records to ascertain the amount of duty paid on the merchandise exported. To the extent appropriate and not inconsistent with the provisions of this subpart, drawback claims shall be liquidated in accordance with the provisions of §§ 191.61 and 191.71 of this part.

**§ 191.139 Amount of drawback.**

Drawback due under this subpart shall not be subject to the retention of 1 percent.

(Sec. 557. 46 Stat. 744, as amended; 19 U.S.C. 1557)

SUBPART N—SAME CONDITION AND REJECTED MERCHANDISE DRAWBACK

**§ 191.141 Same Condition Drawback.**

(a) *General Provisions.*

(1) *Allowance.* Section 313(j), Tariff Act of 1930, as amended (19 U.S.C. 1313(j)), provides for drawback on imported merchandise exported in the same condition as when imported, or destroyed under Customs supervision and not used within the United States before such exportation or destruction (see § 191.4(a)(9)).

(2) *Time of exportation or destruction.* Drawback shall be allowed on imported merchandise if exported or destroyed under subparagraph (1) of this section before the close of the 3-year period beginning on the date of importation.

(3) *Use.* The performing of incidental operations (including, but not limited to, testing, cleaning, repacking, and inspecting) on the imported merchandise itself, not amounting to manufacture or production for drawback purposes shall not be treated as a use of that merchandise for purposes of applying subparagraph (1) of this section.

(b) *Filing and documentation prior to exportation.*

(1) *Filing.* An exporter-claimant who desires to export merchandise with drawback under 19 U.S.C. 1313(j) shall file with the re-

gional commissioner, or the district (area) director, or port director, if authority has been delegated to that official by the regional commissioner, a completed Customs Form 7539. The exporter-claimant also shall furnish a copy of the import entry or identify the import entry, date of entry, and port of entry under which the merchandise was imported into the United States. It shall certify that the merchandise is in the same condition as when imported and not used within the United States before such exportation. Transfers shall be documented by certificates of delivery (see section 191.65).

(2)(i) *Time of filing.* The completed Customs Form 7539 shall be filed with the regional commissioner or district (area) director, or port director, if authority has been delegated to that official by the regional commissioner, at least 5 working days prior to the date of intended exportation of the merchandise, unless the Customs officer approves a shorter filing period.

(ii) *Waiver of prior notice of intent to export.* A request for a waiver of prior notice by an exporter-claimant shall be in writing to the regional commissioner, or the district (area) director or port director, if authority has been delegated to that official by the regional commissioner. The appropriate Customs officer may waive prior notice at any time for any exporter-claimant. An exporter-claimant shall be granted this waiver after filing with the appropriate Customs official six consecutive claims free of substantial error, provided that such exporter-claimant has operated under the same condition program for a minimum of six months. An exporter-claimant who repeatedly files inaccurate claims may have the privilege (of filing without prior notice) revoked. Customs will so notify the exporter-claimant in writing of the revocation as soon as possible.

(3) *Examination.*

(i) *Decision to examine.* Within 3 working days after Customs Form 7539 is filed, the exporter-claimant shall be notified whether Customs will examine the merchandise. If the exporter-claimant is not notified within the 3-day period, the exporter-claimant shall export the merchandise without delay.

(ii) *Time and place of examination.* If the appropriate Customs officer determines to examine the merchandise, he shall notify the exporter-claimant of the time and place of the examination. The examination shall be completed within 5 working days after the filing of Customs Form 7539, unless failure to examine during this period is caused by the exporter-claimant. If the examination is completed at a port other than the port of intended exportation, the exporter-claimant shall transport the merchandise in-bond to the port of exportation.

(iii) *Extent of examination.* The appropriate Customs officer may permit release of merchandise without examination, or may examine routinely (to the extent he determined necessary) items exported, provided such examinations do no exceed 10 percent of the total

items exported (i.e., merchandise in one of ten claims could be examined). If the Customs officer believes it is necessary to examine more than 10 percent of the exported items, he shall present the reasons to Headquarters and obtain approval for such other examination.

(c) *Completion of drawback entry for exported merchandise.* Within 3 years after exportation of merchandise under section 191.141(b), an exporter-claimant shall complete his drawback claim by filing with the same Customs officer who received Customs Form 7539 evidence of exportation under the procedures described in section 191.52 (notice of exportation) or section 191.54 (certified notice of exportation by mail) of this part.

(d) *Alternative procedure for exported merchandise.* In place of the procedures set forth in sections 191.141(b) and (c), an exporter-claimant may apply with the regional commissioner, or the district (area) director, if authority has been delegated to that official by the regional commissioner, for permission to use the exporter's summary procedure (see section 191.53). If the request is approved, the exporter-claimant shall complete a drawback claim no later than 3 years after exportation. When this alternative procedure is used, no prior notice of intent to export or examination is necessary for purposes of obtaining drawback.

(e) *General.* The provisions relating to direct identification drawback shall apply to claims for drawback under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart. Specifically, sections 191.22(b) and (c), and 191.65 are applicable to drawback under 19 U.S.C. 1313(j).

(f) *Drawback on destroyed merchandise.*

(1) *Procedure.* A claimant desiring to destroy merchandise to collect drawback under same condition drawback shall file with the regional commissioner, or the district (area) director or port director, if authority has been delegated to that official by the regional commissioner, a completed Customs Form 7539. At least 7 working days prior to the intended date of destruction, the exporter-claimant shall notify the appropriate Customs officer of the time and place of destruction, by submitting Customs Form 3499 with Customs Form 7539 at the location wherein the destruction is to occur. It shall certify that the merchandise is in the same condition as when imported and not used within the United States before such destruction. Destruction of merchandise after such notification on Customs Form 3499 shall be deemed to have occurred under Customs supervision.

(2) *Completion of drawback entry.* After destruction, the claimant and district director or his designee who witnessed destruction shall certify on Customs Form 7539 or an attachment thereto the time and place of destruction.

(g) *Liquidation of the drawback claim.*

(1) Entries shall be liquidated or reliquidated in the region or districts as determined by the regional commissioner.

(2) Upon review of a drawback claim by the liquidator, if the claim is determined to be incomplete, the liquidator shall notify promptly the claimant, who shall then have the opportunity to amend the claim prior to its denial. The claimant shall respond in writing within 20 days of Customs notice.

(3) If the claim is denied, the claimant shall be notified in accordance with sections 159.9 and 159.10 of this chapter.

**§ 191.142 Merchandise not conforming to sample or specifications or shipped without the consent of the consignee.**

(a) *General.*

(1) Section 313(c), Tariff Act of 1930, as amended (19 U.S.C. 1313(c)), provides for drawback upon the exportation of imported merchandise not conforming to sample or specifications or shipped without the consent of the consignee. The merchandise must be returned to Customs custody for exportation within 90 days after release from Customs custody unless Customs authorizes a longer period (see section 191.4(a)(3)).

(2) Rejected merchandise may be the subject of a same condition drawback claim in accordance with sections 191.141(a)–(f).

(b) *Procedure.*

(1) The exporter-claimant shall file with any district director a drawback entry on Customs Form 7539 at the time the merchandise is returned to Customs custody.

(2) The exporter-claimant also shall submit documentation to establish that the merchandise does not conform to sample or specifications or was shipped without the consent of the consignee.

(3) The district director shall approve the place of delivery of the merchandise if he is satisfied that the merchandise does not conform to sample or specifications or was shipped without the consent of the consignee.

(4) The exporter-claimant shall return the merchandise to Customs custody within 90 days after the date the merchandise was originally released from Customs custody unless an extension of time is specifically authorized in writing by the district director or other appropriate Customs official. A reasonable extension of time will be granted if the failure to comply with the 90 day provision is beyond the control of the applicant. Drawback shall be denied on merchandise returned to Customs custody after the authorized time period, including any extension.

(5) The exporter-claimant shall export the merchandise under Customs supervision and shall provide proof of exportation by filing with the same district director who received the Customs Form 7539 a notice of exportation certified by a Customs officer under section 191.52(c)(1), or otherwise supported by those documents set out in section 191.52(c)(2) except that if a bill of lading is submitted proving exportation, no notice of exportation shall be re-

quired. The exporter-claimant also may establish exportation by mail as set out in section 191.154.

(6) Drawback under this section is payable to the exporter-claimant who is the importer of record or the actual owner named in the import entry. The procedures for liquidating a drawback claim shall be the same as under section 191.141(g).

## SUBPART O—DISTILLED SPIRITS, WINES, OR BEERS WHICH ARE UNMERCHANTABLE OR DO NOT CONFORM TO SAMPLE OR SPECIFICATIONS

### § 191.151 Refund of taxes.

Section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)), provides for the refund, emission, abatement or credit to the importer of internal-revenue taxes paid or determined incident to importation, upon the exportation, or destruction under Customs supervision, of imported distilled spirits, wines, or beer found after entry to be unmerchantable or not to conform to sample or specifications and which are returned to Customs custody (see § 191.4(b)).

### § 191.152 Procedure.

The export procedures shall be the same as that provided in section 191.142(b) except that the claimant must be the importer and as otherwise provided in this subpart.

### § 191.153 Documentation.

(a) *Entry.* Customs Form 7539, appropriately modified, shall be used to claim drawback under this subpart.

(b) *Documentation.* The drawback entry for unmerchantable merchandise shall be accompanied by a certificate of the importer setting forth in detail the facts which cause the merchandise to be unmerchantable and any additional proof that the district director requires to establish that the merchandise is unmerchantable.

### § 191.154 Return to Customs custody.

There is no time limit for the return to Customs custody of distilled spirits, wine, or beer subject to refund of taxes under the provisions of this subpart.

### § 191.155 No exportation by mail.

Merchandise covered by this subpart shall not be exported by mail.

### § 191.156 Destruction of merchandise.

(a) *Action by the importer.* A drawback claimant who proposes to destroy rather than export the distilled spirits, wine, or beer shall state that fact on Customs Form 7539.

(b) *Action by Customs.* Distilled spirits, wine, or beer returned to Customs custody at the place approved by the district director where the drawback entry was filed shall be destroyed under the supervision of the Customs officer who shall certify the destruction on Customs Form 3499.

**§ 191.157 Liquidation.**

No deduction of 1 percent of the internal revenue taxes paid or determined shall be made in allowing claims under section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)).

**§ 191.158 Time limit for exportation or destruction.**

Merchandise not exported or destroyed within 90 days from the date of notification of acceptance of the drawback entry shall be considered unclaimed, unless upon written request by the importer, the district director grants an extension of not more than 90 days.

## SUBPART P—MERCHANDISE TRANSFERRED TO A FOREIGN TRADE ZONE FROM CUSTOMS TERRITORY

**§ 191.161 Drawback allowance.**

The fourth provision of section 3 of the Foreign Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81c) provides for drawback on merchandise transferred to a foreign trade zone from Customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage, provided there is compliance with the regulations of this subpart (see § 191.4(a)(12)).

**§ 191.162 Zone-restricted merchandise.**

Merchandise in a foreign trade zone for the purposes specified in § 191.161 shall be given status as zone-restricted merchandise on proper application (see § 146.25 of this chapter).

(Sec. 3, 48 Stat. 999, as amended; 19 U.S.C. 81c)

**§ 191.163 Articles manufactured or produced in the United States.**

(a) *Procedure for filing documents.* Except for the evidence of exportation procedure, the drawback procedures prescribed in this part shall be followed as applicable to drawback under this subpart on articles manufactured or produced in the United States with the use of imported or substituted merchandise, and on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced with the use of domestic tax-paid alcohol.

(b) *Notice of transfer.*—(1) *Proof of export.* The notice of zone transfer on Customs Form 7514 shall be in place of the documents under subpart E to establish the exportation.

(2) *Filing procedures.* The notice of transfer, in triplicate, shall be filed with the district director where the foreign trade zone is located prior to the transfer of the articles to the zone, or within 3 years after the transfer of the articles to the zone. A notice filed after the transfer shall state the foreign trade zone lot number.

(3) *Contents of notice.* Each notice of transfer shall show the:

(i) Number and location of the foreign trade zone;

(ii) Number and kind of packages and their marks and numbers;

(iii) Description of the articles, including weight (gross and net), gauge, measure, or number;

(iv) Name of the transferor; and

(v) Place where the drawback entry is to be filed.

(c) *Action of the district director on the notice of transfer.—(1) Assignment of number.* The district director shall assign a number to each notice of transfer, return one copy to the transferor and forward another copy to the Customs officer at the foreign trade zone.

(2) *Certification and forwarding notice to transferor.* After articles have been received in the zone, the Customs officer in charge at the zone shall certify on a copy of the notice of transfer the receipt of the articles and forward the notice to the transferor or the person designated by the transferor.

(d) *Foreign trade zone operator's certificate.* Before filing the certified copy of the notice of transfer with the drawback entry, the transferor shall obtain the foreign trade zone operator's certification of receipt of the articles in the zone (see § 191.164(d)(2)).

(e) *Drawback entries.* Drawback entries shall be filed on Customs Form 7573, 7575, 7579, or 7585, as applicable, appropriately modified, to indicate that the merchandise was transferred to a foreign trade zone. The "Declaration of Exportation" shall be modified as follows:

**DECLARATION OF TRANSFER TO A FOREIGN TRADE ZONE**

I, ——————— (member of firm, officer representing corporation, agent, or attorney), of ————, declare that, to the best of my knowledge and belief the particulars of transfer stated in this entry, the notices of transfer, and receipts are correct, and that the merchandise was transferred to a foreign trade zone for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the United States for domestic consumption.

Dated: ————.

Transferor or agent. —————————.

(Sec. 3, 48 Stat. 999, as amended, 19 U.S.C. 81c)

### § 191.164 Merchandise transferred from continuous Customs custody.

(a) *Procedure for filing claims.* The procedure described in Subpart M of this part shall be followed as applicable, to drawback on merchandise transferred to a foreign trade zone from continuous Customs custody.

(b) *Drawback entry.* Prior to the transfer of merchandise from continuous Customs custody to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the district director a direct export entry on Customs Form 7512 in duplicate. The district director shall forward one copy of Customs Form 7512 to the Customs officer in charge at the zone.

(c) *Certification by Customs and zone operator.* After the merchandise has been received in the zone, the Customs officer in

charge at the zone shall certify on the copy of Customs Form 7512 the receipt of the merchandise and forward the form to the transferor or the person designated by the transferor to obtain the foreign trade zone operator's certification. After obtaining and executing the certifications provided for in paragraph (d) of this section, the transferor shall resubmit Customs Form 7512 to the district director in place of the bill of lading required by § 191.136 of this part.

(d) *Modification of drawback entry.* (1) *Indication of transfer.* Customs Form 7512 shall be modified to indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor shall endorse Customs Form 7512 as follows for execution by the foreign trade zone operator:

**Certification of Foreign Trade Zone Operator**

The merchandise described in the entry was received from ——— on ———, 19—; in Foreign Trade Zone No. —, ——— (City and State)

Exceptions: ———.———
(Name and title)
By ——— (Name of operator)

(3) *Transferor's declaration.* The transferor shall declare on Customs Form 7512 as follows:

**Transferor's Declaration**

I, ——— of the firm of ——— declare that the merchandise described in this entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade zone No. —, located at ———, (City and State) for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the United States for domestic consumption. I further declare that to the best of my knowledge and belief, this merchandise is the same in quantity, quality, value, and package, unavoidable wastage and damage excepted, as it was at the time of importation; that no allowance nor reduction of duties has been made for damage or other cause except as specified in this entry; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated: ———.

(Transferer)

(Sec. 3, Stat. 999, as amended; 19 U.S.C. 81c)

### § 191.165 Same condition drawback merchandise and merchandise not conforming to sample or specifications or shipped without the consent of the consignee.

(a) *Procedure for filing claims.* The procedures described in § 191.141, relating to same condition drawback merchandise, and § 191.142 relating to rejected merchandise, shall be followed as applicable to drawback under this subpart for same condition drawback merchandise and merchandise not conforming to sample or specifications, or merchandise shipped without the consent of the consignee.

(b) *Drawback entry.* Before transfer of the merchandise to a foreign trade zone, the importer or a person designated in writing by the importer for the purpose shall file with the district director an entry on Customs Form 7539 in duplicate. The district director will forward one copy of Customs Form 7539 to the Customs officer in charge at the zone.

(c) *Certification by Customs and zone operator.* After the merchandise has been received in the zone the Customs officer in charge at the zone shall certify on the copy of Customs Form 7539 the receipt of the merchandise and forward the form to the transferor or the person designated by the transferor to obtain the foreign trade zone operator's certificate. After obtaining and executing the certifications provided for in paragraph (d) of this section, the transferor shall resubmit Customs Form 7539 to the district director, in place of the bill of lading required by § 191.136 of these regulations.

(d) *Modification of drawback entry.* (1) *Indication of transfer.* Customs Form 7539 shall be modified to indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor shall endorse Customs Form 7539 as follows, for execution by the foreign trade zone operator:

**Certification of Foreign Trade Zone Operator**

The merchandise described in this entry was received from ———— on ————, 19——, in Foreign Trade Zone No. ——, ———— (City and State).

Exceptions: ————

———— (Name of operator)

By ———— (Name of title)

(3) *Transferor's declaration.* The transferor shall declare on Customs Form 7539 as follows:

**Transferor's Declaration**

I, ————, of the firm of ————, declare that the merchandise described in the within entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. ——, located at ————, (City and State) for the sole purpose of exportation, destruction, or storage, not to be returned to the customs territory of the United States for domestic consumption. I further declare that to the best of my knowledge and belief, that said merchandise is the same in quantity, quality, value, and package as specified in this entry; that no allowance nor reduction in duties paid has been made; and that no part of the duties has been refunded by drawback or otherwise

Dated: ————.

———— (Transferor)

(Sec. 3, 48 Stat. 999, as amended; 19 U.S.C. 81c)

## § 191.166 Person entitled to receive drawback.

The person named in the foreign trade zone operator's certification on the notice of transfer or the drawback entry, as applicable,

shall be considered to be the transferor. Drawback shall be paid to the transferor or to the person to whom the transferor directs in writing to be paid.

(Sec. 3, 48 Stat 999, as amended; 19 U.S.C. 81c)

(R.S. 251, as amended, secs. 313, 624, 46 Stat 693, as amended, 759, 77A Stat. 14; 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnt. 11), 1313, 1624))

(Approved by the Office of Management and Budget under control number 1515-0094.)

## Conforming Amendments

### Parts 7, 10, 113, 145, and 158

To conform the Customs Regulations to the changes made by the removal of Part 22, Customs Regulations and the addition of new Part 191, Customs Regulations, Parts 7, 10, 113, 145, and 158 are amended in the following manner:

### Part 7—Customs Relations With Insular Possessions and Guantanamo Bay Naval Station

**§ 7.1 [Amended]**

1. 7.1(a), Customs Regulations is amended by substituting "§§ 191.85 and 191.86" in place of "§ 22.26" appearing at the end of the paragraph.

(R.S. 251, as amended, sec. 624, 46 Stat 759 (19 U.S.C. 66, 1624))

### Part 10—Articles Conditionally Free, Subject to a Reduced Rate, Etc.

**§ 10.38 [Amended]**

§ 10.38(f), Customs Regulations, is amended by substituting "§ 191.10" in place of "§ 22.43".

(R.S. 251, as amended, sec. 624, 46 Stat 759 (19 U.S.C. 66, 1624))

### Part 113—Customs Bonds

1. Subpart B—"Classes and Approval of Bonds" of the index to Part 113 is amended by adding after heading 113.13, a new heading 113.13a to read "Bonds approved by the regional commissioner."

2. Section 113.11(b), Customs Regulations, is amended by renumbering paragraph (b)(2) as (b)(3), and adding a new section (b)(2) to read as follows:

**§ 113.11 Names and classes of bonds.**

* * * * * * *

(b) * * *

(2) Those approved by the regional commissioner (see section 113.13a).

3. Part 113 is amended by adding a new section 113.13a to read as follows:

**§ 113.13a Bonds approved by the regional commissioner.**

The following bonds are subject, after execution, to approval by the regional commissioner:

(a) *Single entry bond, Customs Form 7609.* Bond for accelerated payment of Drawback (Single Entry), Customs Form 7609, in an amount equal to the amount of accelerated payment to be received on the entry covered.

(b) *Term bond, Customs Form 7611.* Bond for Accelerated Payment of Drawback (Term), Customs Form 7611, in an amount sufficient to cover the maximum amount of accelerated payment to be outstanding at any time during the period of the bond.

4. Sections 113.14(x)(1) and (x)(2), Customs Regulations, are removed and reserved.

5. Section 113.14(y), Customs Regulations, is amended by substituting "section 191.53" in place of "section 22.7".

6. Section 113.16 is amended by revising the section heading and first sentence to read as follows:

**§ 113.16** Amount of bond approved by the regional commissioner or district director.

The amount of any Customs bond approved by the regional commissioner or district director shall not be less than $100, except when the law or regulation expressly provides that a lesser amount be taken. * * *

7. Section 113.18 is amended by revising the first sentence to read as follows:

**§ 113.18 Retention of approved bonds.**

All the bonds approved by the regional commissioner, described in section 113.13a, or by the district director, described in section 113.14, except the Bond of Claimant of Seized Goods for Costs of Court, Customs Form 4615, shall remain on file in their respective offices.

(R.S. 251, as amended, secs. 623, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

## Part 145—Mail Importations

Section 145.72(e), Customs Regulations, is amended by substituting "section 191.142" in place of "22.33".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

## Part 158—Relief From Duties on Merchandise Lost, Damaged, Abandoned, or Exported

Section 158.45(b), Customs Regulations, is amended by substituting "Part 191" in place of "Part 22" at the end of the paragraph.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

## Parallel Reference Table

[This table shows the relation of sections in revised Part 191 to Part 22]

| Revised section | Superseded section |
|---|---|
| 191.0 | New. |
| 191.1 | New. |
| 191.2 | New. |
| 191.3 | 22.41. |
| 191.4 | 22.1. |
| 191.5 | 22.46. |
| 191.6 | 22.45. |
| 191.7 | 22.44. |
| 191.8 | New. |
| 191.9 | New. |
| 191.10(a), (b), (c), and (d) | 22.43 |
| 191.10(e) | New. |
| 191.11 | 22.42. |
| 191.12 | New. |
| 191.13 | 22.2. |
| 191.21(a) | New. |
| 191.21(a)(1) | 22.4(k). |
| 191.21(a)(2) | New. |
| 191.21(b) | 22.4(h). |
| 191.21(c) | New. |
| 191.21(d) | 22.4(h). |
| 191.21(e) | 22.4(i). |
| 191.22(a)(1)(i)(ii)(iii)(iv) | 22.4(a). |
| 191.22(a)(1)(v) | 22.4(b). |
| 191.22(a)(2), (3), (4), and (5)(i) | 22.4(a). |
| 191.22(a)(5)(ii) | New. |
| 191.22(b) | 22.4(b) and (c). |
| 191.22(c) | 22.4(f). |
| 191.22(d) | 22.4(e). |
| 191.22(e) | 22.4(d). |
| 191.23(a) and (b) | 22.4(j). |
| 191.23(c) | 22.4(l). |
| 191.23(d) | 22.4(m). |
| 191.24 | 22.4(p). |
| 191.25 | 22.4(o). |
| 191.26 | 22.4(r). |
| 191.31 | New. |
| 191.32(a)(1), (2), (3) | 22.5(a). |
| 191.32(a)(4) | 22.4(b). |
| 191.32(b) | 22.5(b). |
| 191.32(c) | 22.5(e). |
| 191.32(d) | 22.5(c). |
| 191.32(e) | New. |
| 191.33 | New. |
| 191.34 | New. |
| 191.41 | New. |
| 191.42 | New. |
| 191.43 | New. |
| 191.44 | New. |
| 191.45 | New. |
| 191.51(a), (b), and (c) | 22.7(a). |
| 191.51(d) | New. |
| 191.51(e) | New. |
| 191.52(a), (b), and (c) | 22.7(b), (c)(1). |
| 191.52(d) | 22.7(c)(2). |
| 191.53(a) | 22.7(d)(1). |
| 191.53(b), (c), (d), and (e)(1) | 22.7(d)(2). |
| 191.53(e)(2) | 22.7(d)(1). |

## Parallel Reference Table—Continued

[This table shows the relation of sections in revised Part 191 to Part 22]

| Revised section | Superseded section |
| --- | --- |
| 191.53(e)(3) | 22.7(d)(3). |
| 191.54(a) | 22.8(a), (c). |
| 191.54(b) | 22.8(b). |
| 191.55(a) and (b) | 22.9(a). |
| 191.56 | 22.11. |
| 191.57 | 22.12. |
| 191.61 | 22.13(a). |
| 191.62(a)(1) | 22.13(a). |
| 191.62(a)(2) | 22.13(a), (c), and (e). |
| 191.62(a)(3) | 22.13(d). |
| 191.62(a)(4) | 22.13(a). |
| 191.62(b) | 22.13(a). |
| 191.62(c) | New. |
| 191.62(d) | 22.13(f). |
| 191.63 | 22.13(b). |
| 191.64 | 22.13(g). |
| 191.65 | 22.15. |
| 191.66(a) | 22.16(a). |
| 191.66(b) | New. |
| 191.66(c) | 22.16(b). |
| 191.66(d) | 22.16(c). |
| 191.66(e) | 22.16(d). |
| 191.66(f) | New. |
| 191.67(a) | 22.17(a). |
| 191.67(b) | 22.13(b). |
| 191.67(c) | 22.17(b). |
| 191.67(d) | 22.17(c). |
| 191.67(e)(1) | 22.17(e). |
| 191.67(e)(2) | 22.17(d). |
| 191.71(a) | 22.20(a). |
| 191.71(b) | 22.20(b). |
| 191.71(c) | 22.20(c). |
| 191.71(d) | 22.20(d). |
| 191.71(e) | 22.20(e). |
| 191.71(f) | 22.20(f). |
| 191.72 | 22.20a. |
| 191.73(a) | 22.21(a). |
| 191.73(b) | 22.21(b). |
| 191.81(a) | 22.22(a). |
| 191.81(b) | 22.22(b). |
| 191.82(a) | 22.23(a). |
| 191.82(b) | 22.24. |
| 191.82(c) | 22.23(b). |
| 191.82(d) | 22.23(f). |
| 191.82(e) | 22.23(d). |
| 191.82(f) | 22.23(a). |
| 191.82(g) | 22.23(c). |
| 191.82(h) | 22.24. |
| 191.83 | 22.23(e). |
| 191.84(a) | 22.25(a). |
| 191.84(b) | 22.25(b). |
| 191.84(c) | 22.25(c). |
| 191.84(d) | 22.25(d). |
| 191.84(e) | 22.25(e). |
| 191.85 | 22.26(a). |
| 191.86(a) and (b) | 22.26(b). |
| 191.86(c) | 22.26(d). |
| 191.86(d) | 22.26(c). |
| 191.91 | 22.18(a). |
| 191.92 | 22.18(b). |

## Parallel Reference Table—Continued

[This table shows the relation of sections in revised Part 191 to Part 22]

| Revised section | Superseded section |
|---|---|
| 191.93(a), (b), (c), (d), and (e) | 22.18(c). |
| 191.93(f) | 22.18(h). |
| 191.93(g) and (h) | 22.18(d). |
| 191.93(i) and (j) | 22.18(j). |
| 191.93(k) | 22.18(g). |
| 191.94 | 22.18(k). |
| 191.101 | New. |
| 191.102(a) | 22.19(a). |
| 191.102(b) | 22.19(b). |
| 191.103 | 22.19(a). |
| 191.111 | New. |
| 191.112 | New. |
| 191.113 | New. |
| 191.121 | 22.26e(a). |
| 191.122 | New. |
| 191.123(a) and (b) | 22.26a(b). |
| 191.124 | 22.26a(a) and a(c). |
| 191.131 | 22.27(a) and 22.27(b). |
| 191.132 | 22.28(a). |
| 191.133(a) and (b) | 22.28(b). |
| 191.133(c) | 22.28(d). |
| 191.133(d)(1) | 22.28(e). |
| 191.133(d)(2) | 22.28(c). |
| 191.134(a) | 22.29(a). |
| 191.134(b) | 22.29(b). |
| 191.135 | 22.29(c). |
| 191.136(a), (b), and (c) | 22.29(d). |
| 191.136(d) | 22.29(g). |
| 191.136(e) | 22.29(f). |
| 191.137 | 22.29(h). |
| 191.138 | 22.30(a) and (b). |
| 191.139 | 22.30(a). |
| 191.141 | New. |
| 191.142 | 22.31-22.35. |
| 191.151 | New. |
| 191.152 | New. |
| 191.153 | New. |
| 191.154 | New. |
| 191.155 | New. |
| 191.156 | New. |
| 191.157 | New. |
| 191.158 | New. |
| 191.161 | 22.36(a). |
| 191.162 | 22.36(b). |
| 191.163(a) | 22.37(a). |
| 191.163(b)(1) | 22.37(a). |
| 191.163(b)(2) | 22.37(b) and (c). |
| 191.163(b)(3) | 22.37(b). |
| 191.163(c) and (d) | 22.37(d). |
| 191.163(e) | 22.37(e). |
| 191.164(a), (b), and (c) | 22.38(a). |
| 191.164(d) | 22.38(b). |
| 191.165(a), (b), and (c) | 22.39(a). |
| 191.165(d) | 22.39(b). |
| 191.166 | 22.40. |

## Parallel Reference Table

[This table shows the relationship of sections in Part 22 to revised Part 191]

| Old section | New section |
|---|---|
| | 191.0. |
| | 191.1. |
| | 191.2. |
| 22.1 | 191.4. |
| 22.2 | 191.13. |
| 22.3 | Deleted. 191.21(a) and (a)(2). |
| 22.4(a) | 191.22(a)(1) (i)–(iv); 191.22(a)(2)–(5)(i). 191.22(a)(5)(l). |
| 22.4(b) | 191.22(a)(1)(v); 191.22(b); 191.32(a)(4). |
| 22.4(c) | 191.22(b). |
| 22.4(d) | 191.22(e). |
| 22.4(e) | 191.22(d). |
| 22.4(f) | 191.22(c). |
| 22.4(g) | Deleted. |
| 22.4(h) | 191.21(b), (d), 191.21(c). |
| 22.4(i) | 191.21(e). |
| 22.4(j) | 191.23(a), (b). |
| 22.4(k) | 191.21(a)(1), 191.21(a)(2). |
| 22.4(l) | 191.23(c). |
| 22.4(m) | 191.23(d). |
| 22.4(n) | Deleted. |
| 22.4(o) | 191.25. |
| 22.4(p) | 191.24. |
| 22.4(q) | Deleted. |
| 22.4(r) | 191.26. |
| | 191.31. |
| 22.5(a) | 191.32(a) (1)–(3). |
| 22.5(b) | 191.32(b). |
| 22.5(c) | 191.32(d)–(e). |
| 22.5(d) | Deleted. |
| 22.5(e) | 191.32(c), 191.33, 191.34. |
| 22.6(a)–(g) | Deleted. |
| 22.6(g–1) | Deleted. |
| 22.6(h) and (j) | Deleted. |
| 22.7(a) | 191.51(a)–(c), 191.51(d) and (e). |
| 22.7(b) | Deleted. |
| 22.7(c)(1) (b) | 191.52(a)–(c). |
| 22.7(c)(2) | 191.52(d). |
| 22.7(d)(1) | 191.53(a), (e)(2). |
| 22.7(d)(2) | 191.53(b)–(d); (e)(1). |
| 22.7(d)(3) | 191.53(e)(3). |
| 22.8(a)–(c) | 191.54(a)–(b). |
| 22.9(a) | 191.55(a)–(b). |
| 22.9(b) | Deleted. |
| 22.10 | Deleted. |
| 22.11 | 191.56. |
| 22.12 | 191.57. |
| 22.13(a) | 191.61, 191.62(a)(1) and (2)(4); 191.62(b). |
| 22.13(b) | 191.63, 191.67(b). |
| 22.13(c) and (e) | 191.62(a)(2). |
| 22.13(d) | 191.62(a)(3). 191.62(c). |
| 22.13(f) | 191.62(d). |
| 22.13(g) | 191.64. |
| 22.15 | 191.65. |
| 22.16(a) | 191.66(a). 191.66(b). |
| 22.16(b) | 191.66(c). |
| 22.16(c) | 191.66(d). |
| 22.16(d) | 191.66(e). 191.66(f). |
| 22.17(a) | 191.67(a). |
| 22.17(b) | 191.67(c). |

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## PARALLEL REFERENCE TABLE—Continued

[This table shows the relationship of sections in Part 22 to revised Part 191]

| Old section | New section |
|---|---|
| 22.17(c) | 191.67(d). |
| 22.17(d) | 191.67(e)(2). |
| 22.17(e) | 191.67(e)(1). |
| 22.18(a) | 191.91. |
| 22.18(b) | 191.92. |
| 22.18(c) | 191.93(a)–(e). |
| 22.18(d) | 191.93(g) and (h). |
| 22.18(e) | Deleted. |
| 22.18(g) | 191.93(k). |
| 22.18(h) | 191.93(f). |
| 22.18(j) | 191.93(i) and (j). |
| 22.18(k) | 191.94. 191.101. |
| 22.19(a) | 191.102(a), 191.103. |
| 22.19(b) | 191.102(b), 191.111, 191.112, 191.113. |
| 22.20(a)–(d) | 191.71(a)–(d). |
| 22.20(e) | 191.71(e). |
| 22.20(f) | 191.71(f). |
| 22.20a | 191.72. |
| 22.21(a)–(b) | 191.73(a)–(b). |
| 22.22(a) and (b) | 191.81(a) and (b). |
| 22.23(a) | 191.82(a), (f). |
| 22.23(b) | 191.82(c). |
| 22.23(c) | 191.82(g). |
| 22.23(d) | 191.82(e). |
| 22.23(e) | 191.83. |
| 22.23(f) | 191.82(d). |
| 22.24 | 191.82(b) and (h). |
| 22.25(a)–(c) and (e) | 191.84(a)–(d). |
| 22.25(d) | Deleted. |
| 22.26(a) | 191.85. |
| 22.26(b) | 191.86(a) and (b). |
| 22.26(c) | 191.86(d). |
| 22.26(d) | 191.86(c). |
| 22.26a(a) | 191.121. 191.122. |
| 22.26a(b) | 191.123(a) and (b). |
| 22.26a(a), a(c) | 191.124 |
| 22.27(a) and (b) | 191.131. |
| 22.28(a) | 191.132. |
| 22.28(b) | 191.133(a) and (b). |
| 22.28(c) | 191.133(d)(2). |
| 22.28(d) | 191.133(c). |
| 22.28(e) | 191.133(d)(1). |
| 22.29(a) and (b) | 191.134(a) and (b). |
| 22.29(c) | 191.136. |
| 22.29(d) | 191.136(a)–(c). |
| 22.29(e) | Deleted. |
| 22.29(f) | 191.136(e). |
| 22.29(g) | 191.136(d). |
| 22.29(h) | 191.137. |
| 22.30(a) and (b) | 191.138. |
| 22.30(a) | 191.139, 191.141. |
| 22.31–22.35 | 191.142, 191.151–191.158. |
| 22.36(a) | 191.161. |
| 22.36(b) | 191.162. |
| 22.37(a) | 191.163(a). |
| 22.37(a) | 191.163(b)(1). |
| 22.37(b), (c) | 191.163(b)(2). |
| 22.37(b) | 191.163(b)(3). |
| 22.37(d) | 191.163(c) and (d). |
| 22.37(e) | 191.163(e). |

PARALLEL REFERENCE TABLE—Continued

[This table shows the relationship of sections in Part 22 to revised Part 191]

| Old section | New section |
|---|---|
| 22.38(a) | 191.164(a)-(c). |
| 22.38(b) | 191.164(d). |
| 22.39(a) | 191.165(a)-(c). |
| 22.39(b) | 191.165(d). |
| 22.40 | 191.166. |
| 22.41 | 191.3. |
| 22.42 | 191.11, 191.12. |
| 22.43 | 191.10(a)-(d). 191.10(e). |
| 22.44 | 191.7, 191.8, 191.9. |
| 22.45 | 191.6. |
| 22.46 | 191.5, 191.41-191.45. |

## *Analysis of Drawback Revision*

We have reviewed the proposed revisions to drawback in order to assess the need to complete an economic impact analysis consistent with (a) the Regulatory Flexibility Act (RFA) or (b) Executive Order 12291. We conclude that the impact magnitude does not meet the criteria of the Executive Order as specified in Section 1 (b), and thus a regulatory impact analysis need not be initiated. And, in respect to the RFA, the proposal's impact will not reach a significant level. In fact, the proposal's major effects will focus on *simplifying procedures* in which the small operator applying for drawback benefits.

Drawback refers to the refund of import duties and taxes upon that merchandise's export. Numerous different kinds and types of drawback exist.

TABLE 1.—DRAWBACK PAID

[Millions of dollars]

| | |
|---|---|
| Fiscal Year 1980 | $177.9 |
| Fiscal Year 1981 | 274.9 |
| Fiscal Year 1982 | 261.6 |

TABLE 2.—1982 DRAWBACK PAID BY REGION

| | 1982 total (millions of dollars) | Dollars per entry filed |
|---|---|---|
| Total | $261.6 | $7,200 |
| North East | 34.8 | 5,800 |
| New York | 62.6 | 4,200 |

TABLE 2.—1982 DRAWBACK PAID BY REGION—Continued

| | 1982 total (millions of dollars) | Dollars per entry filed |
|---|---|---|
| South East | 26.5 | 15,300 |
| South Central | 37.5 | 38,400 |
| South West | 8.2 | 5,700 |
| Pacific | 35.8 | 5,800 |
| North Central | 56.2 | 11,400 |

TABLE 3.—TOTAL NUMBER OF DRAWBACK ENTRIES

[Thousands]

| | Filed | Liquidated |
|---|---|---|
| Fiscal Year 1978 | 20.3 | 17.9 |
| Fiscal Year 1979 | 21.2 | 21.5 |
| Fiscal Year 1980 | 24.3 | 23.2 |
| Fiscal Year 1981 | 29.1 | 26.7 |
| Fiscal Year 1982 | 36.3 | 34.1 |

TABLE 4.—REGIONAL DRAWBACK ENTRIES FILED

| | Fiscal year 1982 | Fiscal year 1983 through April |
|---|---|---|
| North East | 6,012 | 3,123 |
| New York | 15,012 | 8,639 |
| South East | 1,732 | 1,239 |
| South Central | 977 | 520 |
| South West | 1,429 | 1,021 |
| Pacific | 6,168 | 4,783 |
| North Central | 4,934 | 2,935 |
| Total | 36,264 | 22,260 |

However, the most frequently used types are (1) "direct identification" drawback (the export of merchandise comprised wholly or partly of the imported goods); (2) "substitution" drawback (use of domestic merchandise in an exported product, substituting for drawback refund purposes the domestic component for the same previously imported component); and (3) "same condition" drawback (export or destruction of merchandise within 3 years of its importation and without use within the U.S. during that period).

*Scope of Drawback Facility*

About 5,000 companies apply for drawback refunds yearly with the 100 largest of these groups accounting for most of the claims. Claims totaled $261.6 million in FY 1982 (see Table 1) with the greatest volume refunded in North East and North Central Regions (see Table 2). As the practice of drawback has become more widely known, the number of entries has expanded. over the last four fiscal years, drawback entries filed rose by nearly 80 percent to 36,000 (see Table 3). Customs processing has more than kept pace with this expansion with liquidations over the same period expanding by 91 percent. Again, New York was the largest region of filing, followed by North East and Pacific (see Table 4).

*Principal Changes by the Revision*

The proposed revisions result in greater operational simplification and clarification than at present, particularly for the most frequently used classes of drawback. In the few cases of substantive change, those changes have the practical effect of liberalizing prior requirements, with clear benefit to claimants.

For example, the proposed application procedure has been simplified with the elimination of CF 4477. Instead, Customs will publish and provide to potential claimants a series of sample drawback proposals. Also, drawback claims at present are subject to nearly 100 percent verification. Under the proposed revisions, an audit verification approach will be implemented, speeding up the claims process. In modifying an existing drawback contract, a claimant at present would have to submit a new application. Under the revisions, he will simply provide a supplemental statement to Customs, in effect revising the original contract. In another principal change regarding proof of export, at present the good's landing certificate is required to establish the fact of export. The revisions will provide greater flexibility to claimants by allowing the use of several other documents.

19 CFR Parts 4, 148

(T.D. 83-213)

## Customs Regulations Amendments Relating to Clearance of Personnel Arriving on Military Transports

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide that all persons entering the United States on carriers operated by or for the Department of Defense are required to execute written baggage declarations. This change eliminates the necessity of the commanding officer of the carrier filing a declaration of dutiable articles acquired abroad by the officers and crewmembers of

the carrier, brings the Customs Regulations into conformity with Department of Defense Regulations and tends to discourage the introduction of contraband and encourage the payment of Customs duties.

EFFECTIVE DATE: November 16, 1983.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: James F. Bartley, Entry Procedures and Penalties Division (202-566-5765); Operational Aspects: Daniel Holland, Office of Passenger Enforcement and Facilitation (202-566-5607); U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

## Background

Section 148.73(a), Customs Regulations (19 CFR 148.73(a)), now provides that commissioned officers and enlisted personnel of the Armed Forces of the United States engaged in the operation of any Army or Navy transport, enlisted men carried as passenger, and civilian officers and crewmembers are not required to execute baggage declarations when they enter the United States. All articles acquired by these personnel must be listed on the manifest. A Department of Defense Regulation (DOD 5030.41-R, Chapter 4, paragraph 4003), however, provides that all personnel are required to execute written baggage declarations. To bring the Customs Regulations into conformity with the Department of Defense Regulations, by notice published in the Federal Register on December 1, 1982 (47 FR 54092), it was proposed to amend section 148.73 to require all persons, including crewmembers, entering the United States on carriers operated by or for the Department of Defense, to execute written baggage declarations. No comments were received in response to the notice. Accordingly, after further review of the matter, the changes proposed in that document are being adopted. The baggage declaration requirement for all persons also tends to discourage the introduction of contraband and encourage the payment of Customs duties.

Section 148.72, Customs Regulations (19 CFR 148.72), requires the commanding officer of any vessel operated by the United States or any agency to file a declaration of all dutiable articles acquired abroad by the officers and crewmembers of the vessel. Because the amendment to section 148.73(a) requires baggage declarations by each individual, section 148.72 is no longer necessary. Accordingly, it is being deleted.

Conforming amendments to section 4.5, Customs Regulations (19 CFR 4.5), relating to the arrival and entry of vessels owned by, or under the complete control and management of, the United States or any of its agencies, are necessary to reflect these changes.

## Regulatory Flexibility Act

It is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendments will not have a significant economic impact on a substantial number of small entities. The proposed amendments did not generate interest or attention through comments. The amendments will not have significant secondary or incidental effects on a substantial number of small entities; nor will they impose, or otherwise cause a significant increase in the reporting, recordkeeping or other compliance burdens on a substantial number of small entities.

## Executive Order 12291

Inasmuch as the amendments will not result in a "major rule" as defined in section 1(b) of E.O. 12291, a regulatory impact analysis is not required.

## Drafting Information

The principal author of this document was Gerard J. O'Brien Jr., Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

## List of Subjects

19 CFR Part 4
Customs duties and inspection, Imports, Cargo vessels, Vessels, Reporting and recordkeeping requirements.
19 CFR Part 148
Customs duties and inspection, Imports, Armed Forces, Military personnel.

## Amendments to the Regulations

Parts 4 and 148, Customs Regulations (19 CFR Parts 4, 148), are amended as set forth below.

ALFRED R. DEANGELUS,
*Acting Commissioner of Customs.*

Approved: September 21, 1983.
JOHN M. WALKER, JR.,
*Assistant Secretary of the Treasury.*

[Published in the Federal Register, October 17, 1983 (48 FR 46978)]

## Part 4—Vessels in Foreign and Domestic Trades

§ 4.5(a) is revised to read as follows:

**§ 4.5 Government vessels.**

(a) No report of arrival or entry shall be required of any vessel owned by, or under the complete control and management of, the

United States or any of its agencies, if such vessel (1) is manned wholly by members of the uniformed services of the United States, by personnel in the civil service of the United States, or by both, and (2) is transporting only property of the United States or passengers traveling on official business of the United States, or is in ballast. However, if any cargo is on board, the master or commander of each such vessel arriving from abroad shall file a Cargo Declaration, Customs Form 1302, or an equivalent form issued by the Department of Defense, in duplicate. The original of each Cargo Declaration or equivalent form required under this paragraph shall be filed with the district director within 48 hours after the arrival of the vessel. The other copy shall be made available for use by the discharging inspector at the pier. See section 148.73 of this chapter with respect to baggage on carriers operated by the Department of Defense.

* * * * * * *

(R.S. 251, as amended, section 498, 46 Stat. 728, as amended, section 624, 46 Stat. 759 (19 U.S.C. 66, 1498, 624).)

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

**§ 148.72 [Removed and reserved]**

1. Part 148 is amended by removing section 148.72 and by marking it "Reserved".

2. The section heading and paragraph (a) of § 148.73 is revised to read as follows:

**§ 148.73 Baggage on carriers operated by the Department of Defense.**

(a) *Declaration.* All persons, including crewmembers, entering the United States on carriers operated by or for the Department of Defense shall execute written baggage declarations.

* * * * * * *

(R.S. 251, as amended, section 498, 46 Stat. 728, as amended, section 624, 46 Stat. 759 (19 U.S.C. 66, 1498, 624).)

19 CFR Parts 4 and 10

(T.D. 83-214)

Custom Regulations Amendments Relating to the Vessel Documentation Act

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to clarify the documentation procedure for U.S. vessels engaged in various trades and to define clearly the types of supplies and equip-

ment for vessels which are exempt from the payment of Customs duties and internal revenue taxes. These conforming amendments, which are procedural and technical in nature, are necessary due to changes in the Vessel Documentation Act.

EFFECTIVE DATE: November 14, 1983.

FOR FURTHER INFORMATION CONTACT: Harold Singer, Carriers, Drawback and Bond Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

### Background

Pursuant to Pub. L. 96-594, the Vessel Documentation Act, ("the Act") the Coast Guard revised and simplified its regulations contained in Part 67 of Title 46, CFR, relating to vessel documentation. Federal documentation of vessels, a form of national licensing, is required for the operation of certain vessels in certain trades, serves as evidence of vessel nationality, and, with certain exceptions, permits vessels to be subject to preferred mortgages.

One of the responsibilities of Customs in connection with the arrival and entry of vessels is to ensure compliance with the Coast Guard documentation requirements. The new Coast Guard regulations were published as Coast Guard Decision 80-107 in the Federal Register on June 24, 1982 (47 FR 27490), to amend 46 CFR Parts 66, 67, 68, and 69. The regulations revise terminology and simplify the requirements controlling vessel documentation, administrative procedures and paperwork without making substantive changes in the underlying requirements. The Act and the revised Coast Guard regulations became effective July 1, 1982.

This document amends Part 4, Customs Regulations (19 CFR Part 4), to clarify the documentation procedure for U.S. vessels engaged in various trades, and section 10.59, Customs Regulations (19 CFR 10.59), to define clearly the types of supplies and equipment for vessels which are exempt from Customs duties and internal revenue taxes. These conforming amendments, which are procedural and technical in nature, are necessary due to changes in the Act which was set forth as T.D. 82-138 on page 19 of the Customs Bulletin of August 11, 1982.

Specifically, several changes to the Customs Regulations are involved. One change in section 4.0(c), under the heading "General definitions", would be to revise the term "documented" from a vessel registered, enrolled and licensed, or licensed by the Coast Guard, to a vessel for which a valid Certificate of Documentation, form CG 1270, ("Certificate") issued by the Coast Guard, is outstanding. Upon a vessel's qualification and its owner's proper application to the appropriate Coast Guard office, a Certificate will be issued by the Coast Guard to certify licensing of that vessel for reg-

istry, coastwise trade, Great Lakes trade, the fisheries, or pleasure use.

Coast Guard Decision 80-107 contains information regarding each of these five trades for which a Certificate may be endorsed and the privileges acquired through such endorsements. This information is as follows:

A *registry endorsement* is available to a vessel to be employed in foreign trade; trade with Guam, American Samoa, Wake Island, Midway, or Kingman Reef; and in other employments for which a coastwise license or Great Lakes license or fishery license is not required (46 CFR 67.17-3).

A *coastwise license endorsement* entitles the vessel to employment in the coastwise trade, the fisheries, and in any other employment for which a registry or Great Lakes license is not required (46 CFR 67.17-5).

A *Great Lakes license endorsement* entitles the vessel to engage in the coastwise trade and the fisheries on the Great Lakes and their tributaries and connecting waters, in trade with Canada and in any other employment for which a registry, coastwise license, or a fishery license is not required (46 CFR 67.17-7).

Subject to federal and state laws regulating the fisheries, a *fishery license endorsement* authorizes the vessel to fish within the fishery conservation zone as defined in 16 U.S.C. 1811 and landward of that zone, and to land its catch, wherever caught, in the United States (46 CFR 67.17-9).

A *pleasure license* entitles a vessel to pleasure use only (46 CFR 67.17-11).

Generally, any vessel of at least 5 net tons and wholly owned by a United States citizen or citizens is eligible for documentation. However, a vessel must also be built in the United States to qualify for a coastwise, Great Lakes, or fisheries license.

The Certificate may be simultaneously endorsed for operation under as many licenses as the vessel is qualified for and for which application has been made. However, where a vessel possesses a Certificate bearing 2 or more endorsements, the actual use of the vessel determines the license under which it is operating.

The revised term "documented", and the various "documented" classifications (registry, coastwise trade, Great Lakes trade, the fisheries, and pleasure use) would be inserted in certain other provisions of Part 4, Customs Regulations, and in subsection 10.59(e), Customs Regulations, to provide clarity and consistency.

Another change would be to revise section 4.80(h), Customs Regulations, to correspond with the amendment to 46 U.S.C. 319, by increasing the civil penalty for an undocumented vessel that arrives at a port without the proper Certificate. As amended by section 126(e)(1) of the Act, an undocumented vessel will be subject to a civil penalty of $500, as opposed to the existing $30 fine, for each port at which it arrives without a proper Certificate. This provision

applies to any vessel employed in one of the trades, other than a trade covered by a registry, for which a Certificate is issued under the vessel documentation laws. Further, if this undocumented or improperly documented vessel has on board any foreign merchandise, sea stores excepted, or any domestic taxable alcoholic beverages, on which the duty and taxes have not been paid or secured to be paid, the vessel and its cargo are subject to seizure and forfeiture.

The other changes are minor technical and conforming amendments which provide clarity and consistency. These changes are not substantive, but merely procedural and are necessary to correspond to the new Coast Guard requirements. They are conforming amendments which are being made as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

### List of Subjects in 19 CFR

Part 4

Customs duties and inspection, imports, cargo vessels, coastal zone, fisheries, fishing vessels, harbors, reporting requirements, vessels, yachts.

Part 10

Customs duties and inspection, imports, fisheries.

### Regulations Amendments

To conform the Customs Regulations to the Vessel Documentation Act and to changes in the Coast Guard regulations, Part 4, Customs Regulations (19 CFR Part 4), and Part 10, Customs Regulations (19 CFR Part 10), are amended in the following manner:

### Part 4—Vessels in Foreign and Domestic Trades

1. Section 4.0(c) is revised to read as follows:

**§ 4.0 General Definitions.**

* * * * * * *

(c) The term "documented" vessel means a vessel for which a valid Certificate of Documentation, form CG 1270, issued by the U.S. Coast Guard is outstanding. Upon qualification and proper application to the appropriate Coast Guard Office, the Certificate of Documentation may be endorsed for (1) registry (generally, available to a vessel to be employed in foreign trade, trade with Guam, American Samoa, Midway, or Kingman Reef, and other employments for which another endorsement is not required), (2) coastwise license (generally, entitles a vessel to employment in the coastwise trade, the fisheries, and other employments for which another endorsement is not required), (3) Great Lakes license (generally, enti-

tles a vessel to engage in the coastwise trade and the fisheries on the Great Lakes and their tributary and connecting waters, in trade with Canada, and in other employment for which another endorsement is not required), (4) fishery license (generally, subject to federal and state laws regulating the fisheries, entitles a vessel to fish within the fishery conservation zone (16 U.S.C. 1811) and landward of that zone and to land its catch) or (5) pleasure license (entitles a vessel to pleasure use only). Generally, any vessel of at least 5 net tons and wholly owned by a United States citizen or citizens is eligible for documentation except that for a coastwise, Great Lakes, or fisheries license endorsement a vessel must also be built in the United States. Detailed Coast Guard regulations on documentation are set forth in title 46, Code of Federal Regulations, sections 67.01–67.45.

*   *   *   *   *   *   *

2. Section 4.3 is amended by inserting the words "in accordance with section 4.9" at the end of paragraph (a).

3. Sections 4.7(d)(1) and (2) are revised to read as follows:

**§ 4.7 Inward foreign manifest; production on demand; contents and form.**

*   *   *   *   *   *   *

(d)(1) The master or owner of—

(i) A vessel documented under the laws of the United States with a registry, coastwise license, or Great Lakes license endorsement, or a vessel not so documented but intended to be employed in the foreign, coastwise, or Great Lakes trade, or

(ii) A documented vessel with a fishery license endorsement which has a permit to touch and trade (see section 4.15) or a vessel with a fishery license endorsement lacking a permit to touch and trade but intended to engage in trade—

At the port of first arrival from a foreign country shall declare on Customs Form 226 any equipment, repair parts, or materials purchased for the vessel, or any expense for repairs incurred, outside the United States, within the purview of section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466). If no equipment, repair parts, or materials have been purchased, or repairs made, a declaration to that effect shall be made on Customs Form 226.

(2) If the vessel is at least 500 gross tons, the declaration shall include a statement that no work in the nature of a rebuilding or alteration which might give rise to a reasonable belief that the vessel may have been rebuilt within the meaning of the second proviso to section 27, Merchant Marine Act, 1920, as amended (46 U.S.C. 883), has been effected which has not been either previously reported or separately reported simultaneously with the filing of such declaration. The district director shall notify the U.S. Coast Guard vessel documentation officer at the home port of the vessel of any work in the nature of a rebuilding or alteration, including

the construction of any major component of the hull or superstructure of the vessel, which comes to his attention unless the district director is satisfied that the owner of the vessel has filed an application for rebuilt determination as required by 46 CFR 67.27-3.

* * * * * * *

4. Section 4.7(d)(4) is removed.
5. Section 4.9(a) is revised to read as follows:

**§ 4.9 Formal entry.**

(a) Section 4.3 provides which vessels are subject to formal entry and which are exempt from formal entry requirements. The formal entry of an American vessel from a foreign port or place shall be in accordance with section 434, Tariff Act of 1930 (19 U.S.C. 1434). The term "American vessel" means a vessel of the United States (see section 4.0(b)) as well as a vessel entitled to be documented (see section 4.0(c)) except for its size when arriving by sea (if less than 5 net tons and arriving otherwise than by sea, see Part 123 of this chapter). The required oath on entry shall be executed on Customs Form 1300.

* * * * * * *

6. Section 4.9(c) is revised to read as follows:

**§ 4.9 Formal entry.**

* * * * * * *

(c) The master of any foreign vessel shall exhibit the vessel's document to the district director on or before the entry of the vessel. After the net tonnage has been noted, the master may deliver it to the consul of the nation to which such vessel belongs, in which event he shall file with the district director the certificate required by section 435, Tariff Act of 1930 (19 U.S.C. 1435). If not delivered to the consul, the document shall be deposited in the customhouse. Whether delivered to the foreign consul or deposited at the customhouse, the document shall not be delivered to the master of the foreign vessel until clearance is granted under section 4.61.

* * * * * * *

7. The first sentence of section 4.14(a)(1) is revised to read as follows:

**§ 4.14 Foreign equipment purchases by, and repairs to, American vessels.**

(a) *Dutiability of foreign repairs and equipment purchases.*

(1) *Items subject to duty.* The equipment, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses for repairs made, including the cost of labor incurred, outside the United States, upon any vessel documented under the laws of the United States with a registry, coastwise trade license, or Great Lakes license endorsement, or intended to be employed in such trade, are dutiable at the rate of 50 percent ad va-

lorem on the actual cost in the country where the items are purchased or the repairs are made. * * *

* * * * * * *

8. Sections 4.14(a)(2) (i)-(iv) are revised to read as follows:

(a) * * *

(1) * * *

(2) *Dutiable costs on specific types of vessels-*

(i) *Fishing vessels.* Documented vessels of the United States with a fishery license endorsement having a permit to touch and trade (see section 4.15) and documented vessels with a fishery license endorsement which lack a permit to touch and trade are subject to this section.

(ii) *Government-owned or chartered vessels.* Vessels owned or chartered by the United States Government, if documented with a registry, coastwise trade, or Great Lakes trade endorsement, or if undocumented, intended to engage in foreign, coastwise or Great Lakes trade, are subject to this section. See paragraph (b)(2)(i) of this section with respect to entry procedures for Government vessels.

(iii) *Special purpose vessels.*

(A) *Defined.* A vessel which is documented with a registry, coastwise trade, or Great Lakes trade endorsement, but is designed and used primarily for purposes other than transporting passengers or merchandise, is considered to be a "special purpose vessel."

(B) *Requirements for declaration and entry.* The owner or master of a special purpose vessel shall declare and enter all items purchased, or repairs made, outside the United States unless Customs previously has ruled the vessel is a special purpose vessel and the vessel arrives in a port of the United States two years or more after its last departure from a port of the United States. Under these circumstances, only those items (with the exception of fish nets and netting) purchased and repairs made, outside the United States during the first six months after the vessel's last departure from the United States shall be declared and entered. Fish nets and netting purchased or repaired outside the United States shall be declared and entered whether or not purchased or repaired during the first six months after departure. A copy of the applicable Customs ruling and a certification from the owner or master that the vessel was used during its last voyage primarily for purposes other than transporting passengers or merchandise shall be furnished with the declaration and entry.

(C) *Dutiable items.* If the special purpose vessel is operated in international or foreign waters two years or more after its last departure from the United States, the only dutiable items are fish nets and netting whenever purchased and any other items purchased or repairs made during the first six months after the vessel's last departure from the United States.

(iv) *LASH Barges.* Lighter-aboard-ship (LASH) barges (see sections 4.81 and 4.81a) and similar vessels documented with a registry, coastwise trade, or Great Lakes trade endorsement or, if undocumented, intended to engage in such trade, are subject to this section.

* * * * * * *

9. The first sentence of section 4.15(a) is revised to read as follows:

**§ 4.15 Fishing vessels touching and trading at foreign places.**

(a) Before any vessel documented with a fishery license endorsement shall touch and trade at a foreign port or place, the master shall obtain from the district director a permit on Customs Form 1379 to touch and trade. * * *

* * * * * * *

10. Section 4.15(b) is revised to read as follows:

**§ 4.15 Fishing vessels touching and trading at foreign places.**

* * * * * * *

(b) Upon the arrival of a documented vessel with a fishery endorsement which has put into a foreign port or place, the master shall report its arrival, make entry, and conform in all respects to the regulations applicable in the case of a vessel arriving from a foreign port.

* * * * * * *

11. Section 4.15(d) is revised to read as follows:

**§ 4.15 Fishing vessels touching and trading at foreign places.**

* * * * * * *

(b) No permit to touch and trade shall be issued to a vessel which does not have a Certificate of Documentation with a fishery license endorsement.

* * * * * * *

12. Sections 4.21(b)(11) and (12) are revised to read as follows:

**§ 4.21 Exemptions from tonnage taxes.**

* * * * * * *

(11) It is a tug with a Great Lakes license endorsement on its vessel document, when towing vessels which are required to make entry.

(12) It is a documented vessel with a Great Lakes license endorsement which has touched at an intermediate foreign port or ports during a coastwise voyage.

* * * * * * *

13. Sections 4.60(b)(1) and (2) are revised to read as follows:

**§ 4.60 Vessels required to clear.**

* * * * * * *

(b) The following vessels are not required to clear:

(1) A documented vessel with a pleasure license endorsement or an undocumented American pleasure vessel (i.e., an undocumented vessel wholly owned by a United States citizen or citizens, whether or not it has a certificate of number issued by the State in which the vessel is principally used under 46 U.S.C. 1466–1467 and not engaged in trade nor violating the Customs or navigation laws of the United States and not having visited any hovering vessel (see 19 U.S.C. 1709(d)).

(2) Any documented vessel with a Great Lakes license endorsement which during a voyage on the Great Lakes will touch at a foreign port only for taking on bunker fuel.[91] (see § 4.82).

14. Section 4.64 is revised to read as follows:

**§ 4.64 Documentation.**

No clearance shall be granted to any documented vessel bound to a foreign port or place unless it has a Certificate of Documentation with a registry or, if departing for Canada, a Great Lakes license endorsement.

* * * * * * *

15. Part 4 is amended by removing footnote number "102".

16. Section 4.68(a) is revised to read as follows:

**§ 4.68 Crew; passengers.**

(a) Clearance shall not be granted to any vessel bound on a foreign voyage or engaged in the whale fishery until a crew list has been delivered to the district director in duplicate on Customs and Immigration Form I-418. The district director shall certify the duplicate copy and return it to the master for later presentation to Customs (see section 4.9(b)).

* * * * * * *

17. Sections 4.80(a)(2) and (3), (d), and (h) are revised to read as follows:

**§ 4.80 Vessels entitled to engage in coastwise trade.**

(a) * * *

(1) * * *

(2) Owned by a citizen, is exempt from documentation, and is entitled to or, except for its tonnage, would be entitled to be documented with a coastwise license or, where appropriate, a Great Lakes license endorsement.

(3) Owned by a partnership or association in which at least a 75 percent interest is owned by such a citizen, is exempt from documentation and is entitled to or, except for its tonnage, or citizenship of its owner, or both, would be entitled to be documented for the coastwise trade. The term "citizen" for vessel documentation purposes, whether for an individual, partnership, or corporation owner, is defined in 46 CFR Subpart 67.03.

* * * * * * *

(d) No vessel owned by a corporation which is a citizen of the United States under the Act of September 2, 1958 (46 U.S.C. 883-1) shall be used in any trade other than the coastwise trade and shall not be used in that trade unless it is properly documented for such use or is exempt from documentation and is entitled to or, except for its tonnage, would be entitled to a coastwise license, or where appropriate, a Great Lakes license endorsement. Such a vessel shall not be documented for nor engage in the foreign trade or the fisheries and shall not transport merchandise or passengers coastwise for hire except as a service for a parent or a subsidiary corporation as defined in the aforesaid Act or while under demise or bareboat charter at prevailing rates for use otherwise than in trade with noncontiguous territory of the United States to a common or contract carrier subject to Part III of the Interstate Commerce Act, as amended (49 U.S.C. 901-923), which otherwise qualifies as a citizen of the United States under section 2 of the Shipping Act, 1916, as amended (46 U.S.C. 802), and which is not connected, directly or indirectly, by way of ownership or control with such owning corporation.

* * * * * * *

(h) Any vessel, entitled to be documented and not so documented, employed in a trade for which a Certificate of Documentation is issued under the vessel documentation laws (see section 4.0(c)), other than a trade covered by a registry, is liable to a civil penalty of $500 for each port at which it arrives without the proper Certificate of Documentation. If such a vessel has on board any foreign merchandise (sea stores excepted), or any domestic taxable alcoholic beverages, on which the duty and taxes have not been paid or secured to be paid, the vessel and its cargo are subject to seizure and forfeiture.

* * * * * * *

18. Section 4.81(a) is revised to read as follows:

**§ 4.81 Reports of arrivals and departures in coastwise trade.**

(a) No vessel which is documented with a coastwise license or registry endorsement or is owned by a citizen and exempt from documentation, and which is in ballast or laden only with domestic products or passengers being carried only between points in the United States shall be required to report arrival or to enter when coming into one port of the United States from any other such port, except as provided for in sections 4.83 and 4.84, nor to obtain a clearance, permit to proceed, or permission to depart when going from one port in the United States to any other such port except when transporting merchandise to a port in noncontiguous territory.

* * * * * * *

19. The first sentences of section 4.82(a) and (c) are revised to read as follows:

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**§ 4.82 Touching at foreign port while in coastwise trade.**

(a) A documented vessel with a registry or, where appropriate, a Great Lakes license endorsement which, during a voyage between ports in the United States, touches at one or more foreign ports and there discharges or takes on merchandise, passengers, baggages, or mail shall obtain a permit to proceed or clearance at each port of lading in the United States for the foreign port or ports at which it is intended to touch.

* * * * * * *

(c) Upon arrival from the foreign port or ports at the subsequent port in the United States, a report of arrival and entry of the vessel shall be made, and tonnage taxes shall be paid unless the vessel is properly operating under a document with Great Lakes license endorsement. * * *

* * * * * * *

20. Section 4.83(b) is revised to read as follows:

**§ 4.83 Trade between United States ports on the Great Lakes and other ports of the United States.**

* * * * * * *

(b) A vessel in the coastwise trade only, which is proceeding from a port of the United States on the Great Lakes via the Hudson River and otherwise than by sea, may operate under a document with a Great Lakes license endorsement and shall not be subject to the requirements for clearance, report of arrival, or entry.

* * * * * * *

21. The first sentence of section 4.85(a) is revised to read as follows:

**§ 4.85 Vessels with residue cargo for domestic ports.**

(a) Any foreign vessel or documented vessel with a registry or, where appropriate, a Great Lakes license endorsement, arriving from a foreign port with cargo or passengers manifested for ports in the United States other than the port of first arrival, may proceed with such cargo or passengers from port to port, provided a vessel bond (Customs Form 7567 or 7569) in a suitable amount is on file with the district director at the port of first entry.* * *

* * * * * * *

22. Section 4.87(a) is revised to read as follows:

**§ 4.87 Vessels proceeding foreign via domestic ports.**

(a) Any foreign vessel or documented vessel with a registry or, where appropriate, a Great Lakes license endorsement may proceed from port to port in the United States to lade cargo or passengers for foreign ports.

* * * * * * *

23. Section 4.88(a) is revised to read as follows:

**§ 4.88 Vessels with residue cargo for foreign ports.**

(a) Any foreign vessel or documented vessel with a registry or, where appropriate, a Great Lakes license endorsement which arrives at a port in the United States from a foreign port shall not be required to unlade any merchandise manifested for a foreign destination provided a vessel bond (Customs Form 7567 or 7569) in a suitable amount is on file with the district director at the port of first entry.

* * * * * * *

24. Section 4.90(d) is revised to read as follows:

**§ 4.90 Simultaneous vessel transactions.**

* * * * * * *

(d) A documented vessel may engage in transactions (2), (4), (5), or (6) only if the vessel's document has a registry or, where appropriate, a Great Lakes license endorsement. Such a vessel shall not engage in transactions (1) or (3) unless permitted by the endorsement on its Certificate of Documentation to do so.

* * * * * * *

25. The first sentence of section 4.94(a) is revised to read as follows:

**§ 4.94 Yacht privileges and obligations.**

(a) Any documented vessel with a pleasure license endorsement shall be used exclusively for pleasure and shall not transport merchandise nor carry passengers for pay. * * *

* * * * * * *

26. Sections 4.96(b) and (c) are revised to read as follows:

**§ 4.96 Fisheries.**

* * * * * * *

(b) Except as otherwise provided by treaty or convention to which the United States is a party (see paragraphs (d) and (g) of this section), no foreign-flag vessel shall, whether documented as a cargo vessel or otherwise, land in a port of the United States its catch of fish taken on board such vessel on the high seas or fish products processed therefrom, or any fish or fish products taken on board such vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products. (46 U.S.C. 251). This prohibition applies regardless of the intended ultimate disposition of the fish or fish products (e.g., it applies to transshipments from the foreign vessel to another vessel in United States territorial waters; it applies to landing for transshipment in bond to Canada or Mexico; it applies to landing for exportation under bond; and it applies to landing in a Foreign Trade Zone). However, the prohibition is limited to fish, or fish products processed therefrom, taken on board the foreign vessel on the high seas.

(c) A vessel of the United States to be employed in the fisheries must have a Certificate of Documentation endorsed with a fishery license. "Fisheries" includes the planting, cultivation, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells or marine vegetation at any place within the territorial waters of the United States or the fishery conservation zone established by 16 U.S.C. 1811.

* * * * * * *

27. Part 4 is further amended by removing section 4.96(h) and footnotes 131b and 132c.

(R.S. 251, secs. 2, 3, 23 Stat. 118, as amended, 119, as amended, secs. 309, 317, 46 Stat. 690, as amended, 696, as amended, sec. 624, 46 Stat. 759, sec. 101, 76 Stat. 72, 77A Stat. 14 (5 U.S.C. 301, 19 U.S.C. 66, 1202, 1309, 1317, 1624, 46 U.S.C. 2, 3; General Headnote 11, 12, Tariff Schedules of the United States))

## Part 10—Articles Conditionally Free, Subject to a Reduced Rate, Etc.

The first sentence of section 10.59(e) is revised to read as follows:

**§ 10.59 Exemption from customs duties and internal revenue tax.**[56]

* * * * * * *

(e) A documented vessel with a fisheries license endorsement and foreign fishing vessels of 5 net tons or over may be allowed to withdraw distilled spirits (including alcohol), wines, and beer conditionally free under section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309), if the district director is satisfied from the quantity requested, in the light of (1) whether the vessel is employed in substantially continuous fishing activities, and (2) the vessel's complement, that none of the withdrawn articles is intended to be removed from the vessel in, or otherwise returned to, the United States without the payment of duty or tax. * * *

* * * * * * *

(R.S. 251, as amended, secs. 309, 317, 624, 46 Stat. 690, as amended, 696, as amended, 759, 77A Stat. 14; 5 U.S.C. 301, 19 U.S.C. 66, 1202, 1309, 1317, 1624 (General Headnote 11, 12, Tariff Schedules of the United States))

## Executive Order 12291

Because these amendments do not meet the criteria for a "major rule" as defined by section 1(b) of E.O. 12291, the regulatory impact analysis prescribed by section 3 of the E.O. is not required.

## Inapplicability of Regulatory Flexibility Act

This document is not subject to the provisions of sections 603 and 604 of title 5, United States Code, as added by section 3 of Pub. L. 96-354, the "Regulatory Flexibility Act." That Act does not apply to any regulations such as these for which a notice of proposed

rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

INAPPLICABILITY OF PUBLIC NOTICE

Because these amendments merely clarify existing regulations, only implement a statutory requirement, and impose no additional duty or burden on the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary.

DRAFTING INFORMATION

The principal author of this document was James S. Demb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

ROBERT P. SCHAFFER,
*Acting Commissioner of Customs.*

Approved: September 21, 1983.
JOHN M. WALKER, JR.,
*Assistant Secretary of the Treasury.*

[Published in the Federal Register, October 13, 1983 (48 FR 46510)]

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(T.D. 83-215)

Bonds

Approval and discontinuance of consolidated aircraft bond (air carrier blanket bond), Customs Form 7605

The following consolidated aircraft bonds have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: October 7, 1983.

| Name of principal and surety | Date term commences | Date of approval | Filed with district director/area director/amount |
|---|---|---|---|
| Air Wisconsin, Inc., Outagamie Airport, Appleton, WI; Safeco Insurance Company of America. D 9/27/83 | Aug. 18, 1982 [1] | Aug. 18, 1982 | Chicago, IL $100,000 |

[1] This date was incorrectly given in T.D. 82-167 as August 10, 1982.

BON-3-01

EDWARD B. GABLE, JR.,
*Director,*
*Carriers, Drawback and Bonds Division.*

[illegible]

# *Customs Service Decisions*

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
*Washington, D.C., October 5, 1983.*

The following are decisions made by the United States Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

JOHN P. SIMPSON,
*Director,*
*Office of Regulations and Rulings.*

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(C.S.D. 83-81)

This ruling holds that where importer-parent declares that it sets the prices, transaction value requires a determination that the relationship between the buyer and seller (seller being a subsidiary of the buyer) has not influenced the price paid or payable or that a test value has been met. (19 CFR 152.103(1) (1)

Date: March 25, 1983
File: CLA-2 CO:R:CV:V
542792 LPD
TAA #61

Re: Application for Further Review of Protest No. 1001-1-013585, dated November 17, 1981

This is in regard to the above-captioned protest concerning the dutiable value of Avenge Technical Herbicide Powder imported from the Netherlands. The merchandise was entered on May 13, 1981, and was appraised under transaction value on the basis of the transfer price between the buyer and seller. The entries were liquidated on October 9, 1981. (company name) (Protestant) filed this protest on November 17, 1981, contending that the merchandise should be appraised on the basis of its computed value.

The merchandise is a wild oat herbicide which is produced by (company name) (Manufacturer) (company name) Manufacturer, the only producer of the merchandise in the (country) is a subsidiary of Protestant. The merchandise is sold to Protestant through another of its subsidiaries, (company name) (Seller) (company name) Although sales to Protestant are made through the (country) subsidiary, the merchandise is shipped from the (country) to the United States directly. The selling price of the merchandise is es-

tablished unilaterally, without negotiation, by Protestant and may be increased or decreased by Protestant at any time upon its own initiative. We are advised that while this is not typical of the manner in which Protestant does business in general, it is the manner in which this merchandise is priced.

Because the parties are related and Protestant alone sets the sale price of the merchandise, it argues that the relationship between the parties influences the price actually paid or payable and that the transaction value of the merchandise may not be used as the basis of appraisement. Accordingly, it requests appraisement on the basis of computed value.

The question presented is whether the transactions between Protestant and Seller may be accepted as representing transaction value in view of the relationship of the parties.

Section 402(b)(2)(B), Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA), provides that the transaction value of merchandise may serve as the basis of appraisement in related party transactions if either: (1) an examination of the circumstances of the sale indicates that the relationship between the buyer and seller did not influence the price actually paid or payable; or, (2) the transaction value of the merchandise closely approximates—

> a. The transaction value of identical merchandise or of similar merchandise in sales to unrelated buyers in the United States; or,
>
> b. The deductive or computed value for identical merchandise or similar merchandise.

exported to the United States at or about the same time as the imported merchandise.

In determining whether the relationship between the parties influenced the price of the merchandise, the Statement of Administrative Action relating to Customs valuation, submitted to and approved by Congress along with the TAA, and section 152.103(l)(1), Customs Regulations (19 CFR 152.103(l)(1)), provides that if it is shown that the buyer and seller, although related, bought from and sold to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship and transaction value would be accepted. For example, if the price had been settled in a manner consistent with the normal pricing practices of the industry, or with the way the seller normally deals with buyers who are not related to him, it would be considered not to have been influenced by the relationship.

In addition, the above-cited authorities also provide that where the price is adequate to ensure recovery of all costs plus a profit equivalent to the firms's profit realized over a representative period of time (*e.g.* on an annual basis), in sales of merchandise of the same class or kind, this would demonstrate that the price had not been influenced by the relationship.

Because there are no other producers of identical or similar merchandise in the country of production and there are no sales of identical or similar merchandise by the producer to unrelated purchasers in the United States, we cannot determine whether the price of the merchandise was established in a manner consistent with the normal pricing practices of the industry or in the way in which the seller settles prices for sales to buyers who are not related.

Further, we cannot determine whether the sale price of the merchandise is adequate to ensure recovery of all costs plus a profit which is equivalent to the firm's overall profit realized over a representative period of time in sales of merchandise of the same class or kind. In making this determination in the context of a parent subsidiary relationship, where the subsidiary is the seller, the reference to the firm's overall profit does not mean the overall profit of the subsidiary. In this case, because the technical grade herbicide imported by Protestant is manufactured into an industrial strength herbicide for resale, the parent is not selling merchandise of the same class or kind. Accordingly, there is no basis for determining whether the sale price satisfies this test.

In addition, because there are no sales of identical or similar merchandise to unrelated purchasers in the United States, there is no test value which may serve as a basis of comparison in determining whether the transaction value of the merchandise closely approximates the transaction value of identical or similar merchandise in sales to unrelated buyers in the United States. There is no deductive value which can serve as a test value because no identical or similar merchandise is resold in the United States to unrelated parties after importation. Finally, as to the merchandise covered by this protest, a computed value which can be used as a test value has not previously been established.

Accordingly, there is no basis on which we can determine that the relationship has not influenced the price, or that the price satisfies a test value. Under these circumstances, and where it appears that the parent does, in fact, set the prices, we must reject transaction value.

For the foregoing reasons, you are directed to allow the protest. A copy of this decision should be attached to the Form 19 Notice of Action.

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(C.S.D. 83-82)

This ruling holds that cartridge developers also known as electrostatic developers are properly classified under the provision for

colors and dyes in item 410.22, TSUS, since these developers, whether in liquid or dry form are not within the TSUS provisions for inks

Date: March 28, 1983
File: CLA-2 CO:R:CV:G
072162 JCH

To: Area Director of Customs, New York, New York 10048.
From: Director, Classification and Value Division.
Subject: Request for Internal Advice No. 159/82 Concerning the Tariff Classification of a Cartridge Developer (Your Memorandum of September 28, 1982, CLA-2-06-S:C:DI:11/353 XCLA2-04).

The subject Internal Advice Request was initiated by the importer in a letter dated June 9, 1982. The merchandise was imported from Japan. Our decision follows:

*Issue:* The entered classification of the merchandise has not been provided. You state, however, that your port and others have been classifying similar merchandise for copiers classifiable as office machines under the provision for parts of office machines in item 676.52, Tariff Schedules of the United States (TSUS), thereby implying that the instant merchandise may be classifiable under the parts provision for the provision under which the machine in which the instant merchandise is used would be classified.

However, you state that it is your view that the merchandise is properly classifiable under the provision for benzenoid colors, dyes, and stains, not containing ingredients listed in the chemical appendix to the TSUS, in item 410.22, TSUS, for which the column 1 rate of duty is currently 16 percent ad valorem.

Various claims with respect to other alternative classifications of toners and developers for copiers have been raised in connection with other past and pending matters. With the exception of the possible alternative classification of the instant merchandise under the provision for inks in item 474.26, TSUS, our response to those claims will be included in our replies to the parties raising those claims, and those issues will not be discussed in this memorandum. The colum 1 rate of duty for inks classifiable under item 474.26 is 1.9 percent ad valorem.

*Facts:* The merchandise consists of a rectangular plastic bottle, referred to as a cartridge, containing a liquid developer for use in a facsimile transceiver. A Customs laboratory report dated September 20, 1982, shows the sample contains a non-benzenoid organic solvent, small amounts of carbon black, a benzenoid dye, and a non-benzenoid synthetic plastics material. The report does not iden-

tify any component in the product as a benzenoid material listed in the chemical appendix to the TSUS.

In use, the cap is screwed off the bottle and replaced with a cap containing a spring valve which automatically opens when the bottle is placed upside down in the receptable for it in the facsimile transceiver. Air pressure, of course, keeps the bottle from emptying entirely, and the liquid is gradually fed to the machine as needed. The developer is also used in conjunction with a liquid toner from another bottle which is fed to the machine in a similar manner. When the bottle is empty, the machine can continue to run until the empty bottle is discarded and replaced with a full bottle, or the internal reserve of developer is exhausted.

*Law and analysis:* If classifications of similar merchandise have been made under item 676.52, they were predicated on *Bruce Duncan Co. v. United States,* 63 Cust. Ct. 412, C.D. 3927 (1969), in which it was held that a disposable cartridge containing butane for a cigarette lighter was classifiable as a part and was not a container subject to the rules applicable to containers in General Headnote 6, TSUS. We took the same view with respect to a similar butane cartridge in our decision of February 3, 1977, file No. 047532. See also *Riekes Crisa Corp. v. United States,* 84 Cust. Ct. 132, C.D. 4852 (1980), for illustrations and discussion of other situations where General Headnote 6 may not be applicable.

However, none of the foregoing precedents is authority for the view that fuels or other liquid consumable materials may generally be regarded as parts of the machines that use them just because they may be fed to the machine directly from the bottle they come in without the necessity of using an intermediate reservoir. In the *Bruce Duncan* decision, *supra,* the court treated the butane cartridges as though they were empty, and did not review the appropriateness of the possibility of a constructive segregation of the butane, an issue raised by neither party.

Aside from the fact that a constructive segregation of the instant bottle and its contents would be a strained interpretation, and even if the same could be said for constructive segregation of cigarette lighter cartridges and the butane they contain, developer bottles and cigarette lighter cartridges are distinguishable for other reasons. While you have noted among them that a copier can operate for a short time without a bottle of developer in place, while a cigarette lighter cannot operate at all without its butane cartridge, a butane cartridge represents a significant portion, if not the major portion, of the value of the cigarette lighter. A developer bottle, however, represents a minuscule, if not infinitesimal, portion of the value of the facsimile transceiver. Further, the bottle represents a small portion of the value of the developer it contains, while the value of the butane in a cigarette lighter cartridge in relation to the value of the cartridge is so insignificant that the court in *Bruce Duncan* did not consider it at all. Accordingly, we find that none of

the abundant authorities pertinent to the definition of parts would warrant holding that the bottle in question is a part of a facsimile transceiver. Therefore, we find that the bottle in question is nothing more than the usual type of container within the contemplation General Headnote 6(b)(i), and classifiable as an entirety with the developer it contains with the same rate of duty for the developer.

Having determined that the bottle is not determinative of the classification of its contents, the contents would appear to be classifiable in Schedule 4, Part 1, in accordance with various Headquarters precedents. However, materials for electrostatic copiers were originally classified under the applicable provision for benzenoid mixtures, not specially provided for (n.s.p.f.). This position was abandoned in our decision of March 9, 1977, in IA 128/66, file No. 048213, *aff'd* on reconsideration September 27, 1977, file No. 052550, when we held a dry toner was classifiable as a color or dye. In reaching this conclusion we noted that the provisions for mixtures, n.s.p.f., in Subpart C, Part 1, Schedule 4, were less specific than the provisions for colors, dyes and stains.

This position was reinforced by the view that the provisions for colors, dyes or stains are use provisions, and therefore more specific than certain other provisions in the same subpart, as noted in *United States v. Mobay Chemical Corporation,* 65 CCPA 53, C.A.D. 1206 (1978). The court, at 58, also stated, "Nothing of record indicates that the 'color' provisions do not cover coloring pigments admixed with other ingredients * * *." Accordingly, we later rejected the claim that dry electrostatic copying materials were classifiable as plastics resins, and continued to classify them as colors, dyes or stains, in our decision of August 2, 1982, IA 51/82, file No. 069942.

The foregoing Headquarters decisions dealt with the dutiable status of dry or powdered toners and developers for electrostatic copying machines, and avoidance of classification as ink powders was based on the fact that these materials were never mixed with a liquid solvent or vehicle. See our decision of May 19, 1981, IA 84/80, file No. 065177. This point was further discussed in IA 51/82, *supra,* in which we noted liquification of the plastics components of the powders in a thermal process could not be regarded as equivalent to liquification through the addition of a solvent or vehicle, and, therefore, did not qualify the powders as ink powders.

This position was consistent with and an extension of the rationale of our decision of July 20, 1977, file No. 046492, in which we held that dry colors to which a liquid would be added for use in a gravure printing process, where printed transfer papers were produced that were used in placing designs on textiles in a heat transfer process, were not within the provisions for ink powders since the liquified material was not an "ink" within the meaning of that team as used in the TSUS. However, the court rejected this posi-

tion in *Corporacion Sublistatica, S.A.*, Slip Op., 81-6 (Ct. Int'l Trade, decided January 14, 1981).

The question is whether we are now to infer from the foregoing decisions that if any of the dry toners and developers we previously classified as colors or dyes were to be subsequently mixed with a liquid they would be regarded as ink powders and that the instant merchandise, or any similar mixture, already in a liquid form in its condition as imported, therefore, would be regarded as ink. In fact, we even were urged to regard the dry toners or developers in their powdered form as inks in themselves and our position that an ink must contain a liquid as outdated. In support of this view, citations were made to Kirk-Othmer, *Encyclopedia of Chemical Technology* (2d ed. 1963–70), Vol. II, p. 631, and the *Printing Handbook* (2d ed. 1967), p. 37, where it was indicated that dry toners and developers were also known as "electrostatic inks."

While these authorities do not purport to define liquid toners and developers, it would appear to be a *sine qua non* that if dry toners and developers were inks, the same must be true for liquid toners and developers. But these authorities cannot be used to place dry or liquid toners or developers into the provisions for inks if they merely express usages adopted after enactment of the TSUS, and the products to which they refer were not intended to be included within the meaning of the term "inks" as used in the TSUS at the time of its enactment.

It is well established, particularly with respect to provisions for which use is a factor, that "the meaning of words used in the tariff acts is fixed at the time of enactment and does not fluctuate as the meaning of words might subsequently vary * * *." *United States v. Victoria Gin Co.,* 48 CCPA 33, 37, C.A.D. 759 (1960). See also *Sears, Roebuck & Co. v. United States,* 46 CCPA 79, C.A.D. 701 (1959). This, of course, does not mean that the TSUS provisions are "frozen in time," and tariff provisions will be construed as encompassing subsequently created products which are fairly within their scope. *Novo Enzyme Corporation v. United States,* 82 Cust. Ct. 240, C.D. 4806 (1979). For discussions of the factors to be considered for determining when the basic rule or its exceptions will be applied, see our decision of March 10, 1982, CSD 82-131, File No. 068443, and *Polaroid Corp. v. United States,* 66 Cust. Ct. 116, C.D. 4179 (1971).

In order to exclude a product from a tariff provision as a subsequently created product not contemplated within a tariff provision at the time of enactment, it is not necessary that the product be shown to have been actually invented after enactment of the tariff provision. It is sufficient that the article is shown to have represented an insignificant item of international trade at the time of enactment. *Polaroid Corp. v. United States, supra.* While electrostatic and similar copiers and, presumably, the developers and toners used in them, were invented approximately a quarter of a

century before the present TSUS was enacted, their significant commercial applications were not realized until many years later, and their significance as products of international trade was not realized until after enactment of the TSUS. The commercial development of these products was a companion to the development of data processing and related equipment which is clearly primarily a phenomenon of the post-1960 era. While the TSUS provisions for automatic data processing equipment and office machines have proved flexible enough to encompass these subsequently developed products, other TSUS provisions are more restrictive. For example, we have never enlarged the term "printing" as used in the TSUS in connection with printing machinery to include subsequently developed printing mechanisms for computers or copying machines.

We also believe it is entirely consistent with this approach not to extend the meaning of the term "ink" as used in the TSUS to accommodate possible technical usages designed to keep pace with rapidly expanding technologies. While some of the materials used in mechanisms operated by "print" controls, but not recognized as printing machinery, may nevertheless still be ink within traditional definitions, we find it is appropriate to regard the type of liquid in question as a product so different in composition and characteristics from inks as commonly conceived at the time of enactment of the TSUS, as not to be included within the TSUS provision for inks.

Finally, it is our experience that products of the type in question are consistently and primarily referred to in the trade as toners and developers and we are unaware of any commercial context in which they are referred to as ink. The authorities cited *supra,* however, would appear to indicate an exception to this in technical usages. However, we have examined leading non-technical dictionaries and can find nothing in the various definitions under which a liquid of the type in question and used in non-pressure types of printing could be regarded as ink. Accordingly, we find that if the cited technical treatises are authority for regarding the instant type of merchandise as ink, those authorities are inconsistent with the non-technical dictionaries. Where lexicographic authorities conflict, arbitrary adoption of one meaning by itself as the meaning included in the TSUS would not be a valid interpretation. *Victor Machinery Exchange, Inc. v. United States,* 67 Cust. Ct. 231, C.D. 4279 (1971).

Further, the cited technical authorities do not define "ink." They define "electrostatic ink." When the use of a common term in a scientific or technical application requires that the term be preceded by a qualifier, here the term "electrostatic," to distinguish the article from items only contemplated under the common meaning, the tariff term will be interpreted as only encompassing those articles within the term without the qualifer. *United States v. Sandoz Chemical Works, Inc.,* 46 CCPA 115, C.A.D. 711 (1959). Accordingly,

for this additional reason it is correct to regard electrostatic or similar developers or toners, whether in liquid or dry form, as outside of the TSUS provisions for inks.

*Holding:* For the foregoing reasons, the merchandise in question is properly classifiable under the provision for colors and dyes in item 410.22, TSUS. A copy of this decision may be made available to the internal advice applicant.

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(C.S.D. 83-83)

This ruling holds that a hoverbarge imported into the United States in disassembled sections does not meet the requirements of a vessel. Subassemblies or components may form a vessel when assembled, however they are not considered to be a vessel when imported into the United States because at the time of importation it is the condition of the structure that controls its classification and not what the structure is made into after importation. Sections of the hoverbarge are considered merchandise and are dutiable under the appropriate tariff schedules

Date: April 5, 1983
File: VES-12 CO:R:CD:C
105547 LLB

This ruling concerns the duty status of sections of a hoverbarge imported in a disassembled state over a period of five days.

*Issue:* Whether sections of a hoverbarge imported in a disassembled condition and arriving on ten separate flatbed trucks over a five-day period of time may be considered a vessel and thus not subject to the Tariff Schedules of the United States (TSUS).

*Facts:* A non-self-propelled barge of the hovercraft variety had been in use in the vicinity of Thunder Bay, Ontario, Canada, when arrangements were made to disassemble the 100 ton capacity craft, and ship it to Alaska for use in the Beaufort Sea. The character of its service is to transport freight between Prudhoe Bay, Alaska, and an ice island.

The hovercraft was cut into eleven sections including four longitudinal portions, among others, which had to be cut down even further for truck transport. The dismantled sections were then loaded on the trucks for the trip to Alaska. The disassembly and loading process took approximately two weeks, commencing on December 10, 1980 (petitioner's exhibit 3).

The plan had been for the ten trucks to travel in convoy and enter at the port of Alcan, Alaska, at the same time. During the trip, however, one of the trucks experienced mechanical difficulties and had to remain behind. It was decided that anothor truck should remain with the disabled vehicle for security reasons.

The first eight trucks arrived at Alcan on January 21, 1981, and the two remaining trucks reached Alcan on January 26, 1981.

It is stated that oral advice was given by the Anchorage District which, based upon the belief that the ten trucks would arrive together, indicated that the disassembled hoverbarge would be considered a vessel under General Headnote 5(e), TSUS, and would thus be exempt from tariff consideration. For this reason the first eight truckloads were released at Alcan without entry as an "essentially complete vessel." Consumption entries were required for the last two trucks.

Also appearing in the record is a hand-dated copy of a telex from the importer addressed to Customs Headquarters. The inquiry, dated January 6, 1981 (petitioner's exhibit 13), asks whether the shipment would be considered a "vessel" or whether it would be considered merchandise requiring formal entry. If considered to be merchandise, the specific tariff classification is requested. This telex was never answered since there is no record of it ever having been received at Headquarters.

*Law and analysis:* The importer advances following arguments:

1. The dissembled sections imported on the ten trucks over a five-day period consititutes a "vessel" exempt from entry under General Headnote 5(e), TSUS.
2. The disassembled sections were in fact a single shipment and constituted a single transaction under section 142.17 of the Customs Regulations (19 C.F.R. 142.17).
3. Even if it is decided that the two different truck arrivals were separate transactions, the eight truckloads that arrived first constituted an "unfinished vessel" as contemplated by General Interpretive Rule 10(h), TSUS, and General Headnote 5(e), TSUS.
4. The importer acted only after consulting with and obtaining the opinion of Customs representatives in the Anchorage District, and thus acted with reasonable care in the processing of the shipment through Customs.

1. In support of the contention that the craft is a "vessel" as contemplated under General Headnote 5(e), TSUS, the petitioner cites the relevant statutory definition found in title 19, United States Code, section 1401.

It is stated that the "vessel" which was imported is not only capable of but is currently *used* to transport freight on water. Further, it is stated that the Customs Service has specifically determined that hovercraft are properly considered vessels.

2. In support of the second claim, the petitioner cites section 142.17 of the Customs Regulations which permits the district director the discretion to allow the filing of a single entry summary for merchandise the subject of separate entries if:

1. The merchandise has the same country of exportation, and the same country of origin.

2. The merchandise arrives by land, by the same vessel or by the same air carrier,

3. The merchandise is consigned to the same consignee,

4. The time between the date of the first entry and the date of the last entry does not exceed 1 week, * * *

It is stated that all of these necessary elements have been satisfied.

3. In regard to the third claim, that being that at least the first eight truckloads should be considered one transaction, the petitioner turns to General Interpretive Rule 10(h), TSUS, for support. That rule states:

> Unless the context requires otherwise, a tariff description for an article covers such articles, whether assembled or not assembled, and finished or not finished.

It is stated that following the dictates of this Rule, the craft as it was constituted on January 21, 1981, the date the eight shipments arrived at Alcan, should properly be considered a "substantially complete" vessel. Various court and administrative cases are cited to support this contention including, *Daisy-Hedden, Div. Victor Comptometer Corp. v. United States,* 66 CCPA 97, 600 F. 2d 799, C.A.D. 1228 (1979), which found incomplete fishing reels to be "not finished" under the Rule; case No. 061409, dated August 29, 1979, an administrative ruling finding that disassembled bridge sections arriving in different shipments actually constituted a complete bridge under the Rule; and case No. 057763, dated August 24, 1979 (petitioner's copy dated August 27), an administrative ruling in which it was found that a foreign-manufactured "kit type barge" imported in a disassembled state and without rivets, bolts, nuts, wires, etc., was an unfinished "vessel" invoking the provisions of General Interpretive Rule 10(h), and General Headnote 5(e), TSUS, to permit duty-free entry.

4. To support the fourth and final contention, that the importer acted with reasonable care in processing the shipment, the petitioner cites discussions with and oral advice from Customs personnel in the Anchorage District prior to the arrival of the first shipment. Further, a hand-dated telex is enclosed in the file in which Customs Headquarters is requested to provide guidance regarding the tariff status of the disassembled hovercraft. It is stated that this telex was never answered. Finally, it is stated that the importer reported the truck breakdown to Customs prior to the arrival of the first trucks at Alcan, and received advice that the first eight truckloads could still be entered as an incomplete vessel, duty-free.

Initially, pre-penalty notices were issued to the concerned parties in this matter, citing a violation of title 19, United States Code, section 1592 (commercial fraud). Substantial portions of the petition are devoted to addressing this issue. Subsequent to the petition being submitted to the District Director, Anchorage, it was determined that the penalty action would be withdrawn. Arguments rel-

416-603 O - 83 - 9

ative to the then contemplated action under section 1592 are not, therefore, addressed in this ruling letter.

*Response to Petitioner's Contentions*

1. The disassembled vessel sections imported by a number of trucks do not meet the definition of "vessel" in section 401(a), Tariff Act of 1930, as amended (19 U.S.C. 1401(a)). That definition includes "every description of water craft or other contrivance used, or capable of being used, as a means of transportation in water." Clearly when the trucks arrived in the United States, the disassembled sections were not then being used, or were not then capable of being used, as a means of transportation in water. The disassembled sections met the definition of "merchandise" in section 401(c), Tariff Act of 1930, as amended (19 U.S.C. 1401(c)).

It is a basic tenet of Customs classification procedure that condition at the time of importation is dispositive (*United States v. Citroen,* 223 U.S. 407, 32 S. Ct. 256, 56 L. Ed. 486 (1911)). In examining the condition of the disassembled sections at the time of importation, we find that they are not unlike other structures which have been the subject of judicial and administrative findings.

For example, we have applied the doctrine of condition at time of importation specifically to the issue of disassembled vessel sections in case No. 102304, dated December 6, 1976, wherein we found:

> In determining whether a particular article is a vessel at the time of importation it is the condition of the structure that controls its classification and not what it is made into after importation. The test is the actual status of the structure as being fairly suitable for commerce or navigation and as a means of transportation on water.

The case involved the importation of a dredge, to be brought into the United States in a disassembled state in the form of various subassemblies and assembled here. In this case we found:

> * * * no subassembly or component of the dredge in its condition when imported will have reached a stage of construction that makes it suitable as a means of transportation on water. Therefore, the subassemblies or components, although they may form a "vessel" when assembled, are not considered to be a "vessel" when imported into the United States and are subject to duty under the appropriate provisions of the Tariff Schedules.

The doctrine was discussed in an earlier court case as well. In *United States v. Bethlehem Steel Co., Maryland Shipbuilding & Drydock Co.,* C.A.D. 891, 53 C.C.P.A. 142 (1966), cert. denied, 386 U.S. 912 (1967), rehearing denied, 386 U.S. 987 (1967), the Court was considering the tariff status of a 525 foot vessel midbody which arrived from Europe under tow. The Court found the structure to

be properly classified not as a vessel, but rather as an article in chief value of steel even though it was designed by naval architects, had a cargo capacity of up to 14,000 tons, had arrived with a temporary bow section affixed to it, was equipped with light, heat, power, radio facilities, food, navigation lights and signals, and carried a crew of eight.

2. Section 142.17, Customs Regulations (19 C.F.R. 142.17) relates to the filing of one entry summary for merchandise the subject of separate entries. It has no bearing on whether any contrivance brought into the United States is or is not a vessel as defined by statute.

3. For the reasons given above, the disassembled sections in the eight trucks that arrived first are considered "merchandise" and not a "vessel." Under General Headnote 5(e), TSUS, commercial vessels "are not *articles* subject to the provisions of these schedules." Therefore, General Interpretive Rule 10(h), TSUS, limited to the "tariff description for an *article*," is applicable to disassembled sections as merchandise or articles subject to TSUS but is not authority to conclude that such articles constitute a "vessel."

The authority relied upon by the petitioner to support its third contention is, with one exception, related to merchandise which is subject to various duty provisions of the Tariff Schedules. The exception to this is found in the previously cited administrative ruling 057763, dated August 24, 1979, concerning the importation of a barge in kit form, found to be a "vessel." That ruling is found to be in error and not in accordance with the current views of the Customs Service and is being revoked.

Revocation of a ruling letter is accomplished pursuant to section 177.9(d) of the Customs Regulations (19 C.F.R. 177.9(d)). If the parties in this case relied to any great extent upon the principles set forth in the 1979 letter, it is regrettable. However, the regulations do set forth the effect of ruling letters by stating in section 177.9(c) of the Customs Regulations (19 C.F.R. 177.9(c)), that:

> A ruling letter is subject to modification or revocation without notice to any person, except the person, to whom the letter was addressed. Accordingly, no other person should rely on the principles of that ruling letter or assume that the principles of that ruling will be applied in connection with any transaction other than the one described in the letter.

4. The petitioner's final point concerns precautions taken prior to the arrival of the hoverbarge in the United States, including consulting district Customs officials, keeping those officials apprised of changes in circumstances, and acting upon oral advice from the Anchorage District.

The Customs Regulations set forth clear means by which a binding ruling may be obtained from the Customs Service (Part 177 of the Customs Regulations, (19 C.F.R. 177)). In matters of an urgent nature, the regulations provide for expedited treatment upon sub-

mission of a written request for immediate consideration (section 177.2(d) of the Customs Regulations, 19 C.F.R. 177.2(d)). We note that the disassembly process began on the hoverbarge in Canada on December 10, 1980, and the first trucks did not arrive at Alcan until January 21, 1981, a span of some six weeks. Surely this would have been ample time to have obtained a binding ruling on the tariff status of the craft.

The fact that there is no record of a January 6, 1981, telex having been received at Customs Headquarters is inexplicable. The indications are, however, that even an adverse answer to the petitioner's inquiry would not have affected the decision to import the hoverbarge. The telex is dated January 6, 1981, well after the two week disassembly and loading process had been completed. Obviously the decision to bring the hoverbarge into Alaska had already been made at that point. Further, the wording of the telex itself indicates an awareness of potential dutiability. The two questions raised in the telex are:

> 1. Is entry required at all or is the hoverbarge (vessel) an intangible? and
> 2. If entry is required, classification to be used on entry?

In any case, it is clear that any oral presentations which may have been made by Customs personnel are not tantamount to a ruling. Section 177.1(b) of the Customs Regulations (19 C.F.R. 177.1(b)), provides:

> The Customs Service will not issue rulings in response to oral requests. Oral opinions or advice of Customs Service personnel are not binding on the Customs Service.

*Holdings:*

1. The disassembled sections herein involved do not constitute a "vessel" within the statutory definition.
2. As "merchandise", section 142.17, Customs Regulations, relating to the filing of one entry summary for multiple entries, can be applied to the disassembled sections.
3. General Interpretive Rule 10(h) applies to transactions involving any of the various provisions of the Tariff Schedules, but has no application to designations of vessel status.
4. Oral representations by Customs officials are of an advisory nature only and are not binding upon the Customs Service (section 177.1(b), Customs Regulations).

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(C.S.D. 83-84)

This ruling holds that interest expense incurred by the foreign assembler as a result of a loan used to acquire the fixed assets

of the assembly plant is considered to be part of the usual general expenses of the assembler for purposes of determining computed value

Date: April 12, 1983
File: CLA-2 CO:R:CV:V
543031 BLS

To: District Director of Customs, El Paso, Texas 79985.
From: Director, Classification and Value Division.
Subject: Internal Advice Request 11/83, Proration of Interest Expense.

This is in reference to your memorandum dated January 14, 1983, regarding the above-captioned matter. The issue is whether interest expense incurred by the Mexican assembler as a result of a loan used to acquire the fixed assets of the assembly plant may be prorated in accordance with the percentage such assets are actually utilized.

The basis of appraisement is computed value, apparently because the parties are related, and transaction value (as well as deductive value) was determined to be inapplicable.

The importer advises that asset utilization in the production process ranges from 50 percent to 70 percent, and therefore argues that the interest paid on the loan to acquire these assets should similarly reflect the amount of such utilization for purposes of inclusion in the assembler's usual general expense.

You believe that the reduction of interest expense in this manner is not consistent with Generally Accepted Accounting Principles (G.A.A.P.) nor with the statute. You note that the only authority for reducing the interest expense incurred is if such general expense is inconsistent with the general expenses usually reflected in sales of merchandise of the same class or kind. However, since in the instant case there is no other Mexican producer of merchandise of the same class or kind, the subject asembler's general expenses (and profit) are to be regarded as the usual, including all of the interest expense incurred relating to the production facility.

Our New York office concurs, and is of the opinion that under G.A.A.P., there is no method under which interest expense may be prorated based upon the utilization of assets.

In general, interest expense applies to the organization as a whole and not to a specific product line. Any method of allocating these costs to individual lines necessitates establishing some relationship of these general expenses to an individual product. (See "Generally Accepted Accounting Principles"—International Appli-

cations, Office of Commercial Operations (Trade Analysis Division), U.S. Customs Service).

In this case, G.A.A.P. does not provide for a proration of interest expense merely because the asset acquired with the loan proceeds is utilized less than 100 percent in the production process. The interest expense is nevertheless considered to be an organizational cost of doing business and a general expense. (There is no indication that Mexican G.A.A.P. would provide a different result.) Since the instant assembler is the sole producer in Mexico of the "same class or kind of merchandise", its general expenses and profit are considered to be the usual.

Under the circumstances, such interest expense is considered to be part of the usual general expenses of the assembler for purposes of determining computed value.

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(C.S.D. 83-85)

This ruling holds that merchandise admitted into a foreign-trade zone is imported for drawback purposes. Therefore, privileged status must be requested for manufacturing drawback. (19 U.S.C. 1313(a)(j))

Date: April 29, 1983
File: CO:R:CD:D
215686 R

*Issues:* 1. Whether foreign merchandise admitted into a foreign-trade zone is imported for drawback purposes under 19 U.S.C. 1313(a) and (j)?

2. Whether the duty that is assessed on entry from a zone on an article that was made in the zone with the use of non-privileged foreign merchandise can be refunded as drawback under 19 U.S.C. 1313(a) when that article is exported?

3. Whether the duty that is assessed on entry from a zone on an article that was made in the zone with the use of non-privileged foreign merchandise can be refunded as drawback under 19 U.S.C. 1313(j) when that article is exported?

*Facts:* Flexible metal tubing was admitted into a foreign-trade zone as non-privileged foreign status merchandise. The tubing consisted of several layers of material and was admitted into the zone on large reels. In the zone the tubing was unwound from the reels and cut to various lengths. After cutting, the outer layers of the tubing were peeled away to expose the metal. Steel end fittings were welded to the tubing ends. After welding, the finished article was tested for water pressure resistance. After testing, the finished article was entered into the Customs territory of the United States. The finished article was appraised and classified in accordance with its character and condition at the time of entry. After entry the finished article was exported.

Drawback was claimed under 19 U.S.C. 1313(a).

*Law and analysis:* The relevant part of 19 U.S.C. 81c provides that when foreign merchandise is sent from a zone into the Customs territory of the United States it is subject to the laws affecting imported merchandise. The first proviso to 19 U.S.C. 81c provides an exception to that requirement. Under the proviso, if privileged status is requested and there has been no manipulation or manufacture effecting a change in tariff classification, the appropriate Customs officer is required to take that foreign merchandise under supervision, appraise it, and liquidate the duty due on it. At the time of liquidation the amount of duty due on it is not paid. The liquidated duty must be paid when that merchandise is sent into the Customs territory from the zone.

The Customs Service has held that foreign merchandise admitted into a zone is imported. C.S.D. 79-454, an a ruling dated August 12, 1981 (file 213254) which is to be published in the Customs Bulletin. See also Customs Service letter (file 213254) dated January 11, 1983, which reconsidered and affirmed the ruling dated August 12, 1981, and *Hearing on H.R. 6159 and H.R. 6160,* Committee on Ways and Means, 80th Cong. at 16 (1948).

The Customs Service has held that manufacturing in a foreign-trade zone is manufacturing in the United States for purposes of the manufacturing drawback law. C.S.D. 81-44. The relevant part of 19 U.S.C. 1313(a) provides that upon exportation of articles manufactured in the United States with the use of imported merchandise, 99 percent of the duties paid upon the merchandise so used shall be refunded as drawback. Section 146.48 of the Customs Regulations (19 CFR 146.48) implements 19 U.S.C. 81c with respect to the entry of articles derived entirely or in part from non-privileged foreign merchandise. Except for any privileged merchandise contained in the article, the section provides that the article is classified and appraised in accordance with its character and condition as entered from the zone. C.S.D. 82-29. Any privileged merchandise content is dutiable as liquidated when the privileged status was granted. C.S.D. 79-464.

The statutory language of 19 U.S.C. 1313(a) allows a refund of 99 percent of the duties paid upon the merchandise so used [to manufacture the export articles] rather than a refund of 99 percent of the duties paid upon the exported articles. The interaction of 19 U.S.C. 81c with 19 U.S.C. 1313(a) requires that the foreign merchandise which is used to make the articles that are to be entered from the zone and then are to be exported have privileged status in order to refund duty as drawback under 19 U.S.C. 1313(a).

The fact that duty on privileged foreign status merchandise used in the manufacture of an article in a zone is not paid before the manufacture occurs does not bar drawback. There is nothing in the statute which requires that duties be paid before the imported merchandise is used in manufacture. Section 22.20 of the Customs Reg-

ulations (19 CFR 22.20) permits payments of drawback before liquidation of the import entry. In the situation involving privileged foreign merchandise used to make an article in a zone, the duty on the privileged foreign merchandise will have been liquidated, but not paid, before the manufacture occurs.

The final issue involves same condition drawback under 19 U.S.C. 1313(j). The relevant part of 19 U.S.C. 1313(j) provides that if imported merchandise on which was paid any duty is, before the close of the three-year period beginning on the date of importation, exported in the same condition as when imported, then upon such exportation 99 percent of such duty shall be refunded as drawback. The merchandise that was imported consisted of tubing on reels. The merchandise on which duty was paid was a weldment that was made by cutting the bulk tubing to length and welding end fittings to the cut lengths. That finished article was exported after having been entered from the zone. The finished article was not in the same condition as when imported and duty was paid on the finished article rather than on the imported tubing. Same condition drawback does not apply.

*Holding:* 1. Foreign merchandise admitted into a foreign-trade zone is imported for drawback purposes.

2. Duty that is assessed on entry from a zone on an article that was made in the zone with the use of non-privileged foreign merchandise may not be refunded as drawback under 19 U.S.C. 1313(a) even if that article is exported.

3. The duty that is assessed on entry from a zone of an article that was made in the zone with the use of non-privileged foreign merchandise may not be refunded as drawback under 19 U.S.C. 1313(j) even if that article is exported.

(C.S.D. 83-86)

This ruling holds that the coastwise towing statute (46 U.S.C. 316(a)), does not apply to official towing in the Panama Canal by a towing vessel owned by an agency of the United States Government, i.e., the Panama Canal Commission

Date: May 2, 1983
File: VES-10-03-CO:R:CD:C
105947 PH

In your letter of December 16, 1982, you requested that we comment on a letter dated December 3, 1982, from Mr. Michael Rhode, Jr., Secretary of the Panama Canal Commission, stating that Commission's opinion as to the applicability of 46 U.S.C. 316(a) to Commission towing activities.

Mr. Rhode refers to our ruling VES-5/VES-10-03 CO:R:CD:C 105369 PH, November 30, 1981, in which we ruled that the use of a foreign-built tug to assist or tow United States-flag vessels through

the Canal would not violate the coastwise laws then under consideration (46 U.S.C. 316(a), 883) *except* in the situation in which the assisted United States-flag vessel was towed from a United States port to the Canal and from the Canal to another United States port. Mr. Rhode points out that our ruling did not address the issue of whether 46 U.S.C. 316(a) applies to tugs owned and operated by an agency of the United States Government. Based upon the definition in 46 U.S.C. 316(b) of "person" for purposes of section 316(a) and the penalties provided by section 316(a), Mr. Rhode states it to be the view of the Commission that 46 U.S.C. 316(a) does not apply to tugs owned and operated by an agency of the United States Government in the situation in which our November 30, 1981, ruling held that a foreign-built tug would violate section 316(a) if used to tow a United States-flag vessel through the Canal.

Title 46 United States Code, section 316 (a) and (b), provides that:

> (a) It shall be unlawful for any vessel not wholly owned by a person who is a citizen of the United States within the meaning of the laws respecting the documentation of vessels and not having in force a certificate of registry, a certificate of enrollment, or a license, issued pursuant to this title, or a certificate of award of number issued pursuant to section 288 of this title, to tow any vessel other than a vessel of foreign registry, or a vessel in distress, from any port or place in the United States, its Territories or possessions, embraced within the coastwise laws of the United States, to any other port or place within the same, either directly or by way of a foreign port or place, or to do any part of such towing, or to tow any such vessel, from point to point within the harbors of such places. The owner and master of any vessel towing another vessel in violation of the provisions of this section shall each be liable to a fine of not less than $250 nor more than $1,000, which fines shall constitute liens upon the offending vessel enforceable through the district court of the United States for any district in which such vessel may be found, and clearance shall not be granted to such vessel until the fines have been paid. The towing vessel shall also be further liable to a penalty of $50 per ton on the measurement of every vessel towed in violation of this section, which sum may be recovered by way of libel or suit.
>
> (b) The term "person" as used in subsection (a) of this section, shall be held to include persons, firms, partnerships, associations, organizations, and corporations, doing business or existing under or by the authority of the laws of the United States, or of any State, Territory, district, or other subdivision thereof.

The definition of "person" in section 316(b), by itself, does not preclude the application of section 316(a) to a towing vessel owned by an agency of the United States Government because section 316(a) requires that the towing vessel be wholly owned by a person who is a citizen of the United States *and* have in force an appropriate document. With regard to the latter requirement, the Customs

Service has long held that "a vessel which has a document which restricts it from engaging in the coastwise trade does not have a document in force to engage in coastwise towing within the meaning of section 316(a)." (Treasury Decision 54600(57).)

It is an "old and well-known rule that statutes which in general terms divest pre-existing rights or privileges will not be applied to the sovereign without express words to that effect." (*United States* v. *United Mine Workers of America,* 330 U.S. 258, 272 (1947).) (See also, this rule applied with regard to the meaning of "person" in *United States* v. *Cooper Corp.,* 316 U.S. 600, 614, (1941); Annotation at 56 L. Ed. 2d 895, 899, 900, 908.) This rule has been stated to be an aid in the construction of statutes when their purpose is in doubt, "but it does not require that the aim of a statute fairly to be inferred be disregarded because not explicitly stated." (*United States* v. *California,* 297 U.S. 175, 186 (1936).)

The Customs Service has used this rule of statutory construction in its administration of the coastwise laws. On the basis of two Opinions of the Attorney General of the United States (26 Op. Att'y Gen. 416, 426 (1907)), we have ruled that property of the United States Government is not "merchandise" for purposes of the coastwise laws and thus may be transported between coastwise points by a non-coastwise-qualified vessel. However, we have also taken the position that the coastwise transportation of merchandise by a non-coastwise-qualified vessel owned by an agency of the United States Government would violate the coastwise laws.

The basis for the first of these positions is found in the first of the two Opinions of the Attorney General referred to above (26 Op. Att'y Gen. 416). The penalty for violation of 46 U.S.C. 883, before its amendment by section 213 of the Customs Procedural Reform and Simplification Act of 1978 (92 Stat. 904), was forfeiture of the merchandise transported in violation of that statute. As the Attorney General stated, "[i]f the merchandise subject to forfeiture already belongs to the Government it is obvious that the proceeding would be altogether nugatory and futile." (26 Op. Att'y Gen. at 417.)

Although the 1978 amendment to 46 U.S.C. 883 added the alternate penalty of "a monetary amount up to the value [of the merchandise] * * * to be recovered from any consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing said merchandise to be transported" to that statute, we continue to interpret the statute in the same manner with regard to the coastwise transportation of Government owned property. This is so because of the long-standing and well-established nature of our interpretation of 46 U.S.C. 883 in this regard before the 1978 amendment and because we are aware of no legislative history for that amendment commenting on the continuation of that practice. (See 1978 *United States Code Congressional and Administrative News* 2211, 2245, 2246.) (See also, *Missouri Pacific*

*Railroad Co.* v. *Ault,* 256 U.S. 554, 563, 564 (1921), for support for the proposition that in the absence of evidence in the purpose or letter of a statute, the Government does not undertake to punish itself by the imposition upon itself of fines or penalties.)

The Customs Service does not construe the rule referred to above (see material quoted from *United States* v. *United Mine Workers of America* and *United States* v. *California)* to exempt from application of the coastwise laws merchandise not owned by the Government which is transported by non-coastwise-qualified vessels owned by an agency of the United States Government. To do so would defeat the clear purpose of that statute. The purpose of the coastwise laws, and particularly of 46 U.S.C. 883, is "to encourage the development of an American merchant marine * * *." (*American Maritime Ass'n* v. *Blumenthal,* 590 F. 2d 1156, 1159 (1978, D.C. Ct. of App.).) Permitting merchandise not owned by the Government to be transported coastwise in a non-coastwise-qualified vessel, whether or not it is owned by an agency of the United States Government, would discourage the development of an American merchant marine. Because the merchandise transported in this situation would not be Government property, imposition of a penalty under 46 U.S.C. 883 would not be "nugatory and futile," in the words of the Attorney General (see 26 Op. Att'y Gen. 416, 417, quoted above).

The Customs Service has long held that 46 U.S.C. 316(a) must be construed consistently with 46 U.S.C. 883 (Treasury Decision 70-223(19)). The purpose of section 316(a), as it was amended by the Act of June 11, 1940, 54 Stat. 304, is to protect United States vessels engaged in towing vessels in the coastwise trade. (See, H.R. Report No. 2040, 76th Congress, 3rd Session.) Revised Statute 4370 (derived from section 21 of the Act of July 18, 1866, 14 Stat. 183, and the Act of February 25, 1867, 14 Stat. 410), the coastwise towing statute before the 1940 amendment, prohibited the towing of vessels of the United States from one United States port to another by vessels not of the United States and provided a penalty against the towing vessel of 50 cents per ton of the vessel towed. The statute was explicitly stated not to apply in any case where the towing, in whole or in part, was upon foreign waters. Along with other changes, the 1940 amendment extended the coastwise towing provision to towing between United States ports, either directly or by way of a foreign port or place, or for any part of such towing, and increased the penalty to $250-$1,000 against the master of the towing vessel and $50 per ton of the towed vessel, also against the towing vessel.

The purpose of 46 U.S.C. 316(a), with regard to the question under consideration, is generally the same as that of 46 U.S.C. 883. However, the penalties provided in section 316(a) would be against the towing vessel and the master of the towing vessel, who would be acting in his capacity as an agent of the United States Govern-

ment if the vessel were owned and operated by an agency of the United States Government. Under such circumstances, penalties would be, again in the words of the Attorney General, "nugatory and futile" (see 26 Op. Att'y Gen. 416, 417, discussed above) because the reality of the assessment of such penalties would be the payment of the penalties by the United States Government to the United States Government. Therefore, just as we do not apply section 883 to prohibit the coastwise transportation by a non-coastwise-qualified vessel of property of the United States Government, we would not apply section 316(a) to prohibit the coastwise towing of a United States-flag vessel by a non-coastwise-qualified vessel owned and operated by an agency of the United States Government. (See *Missouri Pacific Railroad Co.* v. *United States,* referred to above, for support for the proposition that in the absence of evidence in the purpose or letter of a statute, the Government does not undertake to punish itself by the imposition upon itself of fines or penalties.)

The Panama Canal Commission is an agency of the United States Government (22 U.S.C. 3611). Accordingly, we concur with Mr. Rhode that 46 U.S.C. 316(a) does not apply to tugs owned by the Panama Canal Commission which are operated in the Panama Canal in the governmental service of the Commission. Although this ruling does not conflict with our November 30, 1981, ruling (published as Customs Service Decision 82-74) to which Mr. Rhode refers because that ruling concerned foreign-built tugs used in the Panama Canal and did not consider or refer to the question of the applicability of 46 U.S.C. 316(a) to such tugs owned by an agency of the United States Government, we are publishing this ruling in the same manner as the November 30, 1981, ruling with the notation that this ruling concerns that ruling.

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(C.S.D. 83-87)

This ruling holds that there is no restriction on the period of time a person may keep his foreign-flag yacht in the United States. Foreign-flag yachts not in possession of a cruising license are subject to the usual requirements of the navigation laws applicable to foreign vessels arriving at, departing from, or proceeding between ports of the United States (19 CFR 4.94(e)). A cruising license is valid for six months and may be renewed. A yacht remaining in the U.S. beyond the duration of a cruising license would be required to comply with the

entry, clearance and permit to proceed requirements of the navigation laws

Date: June 15, 1983
File: VES-4-03/VES-4-02
VES-4-01-CO:R:CD:C
106102 HS

This is in response to your letter of March 18, 1983, forwarding a letter from (constituent) and your letter of April 7, 1983, transmitting a translation of the questions asked in the letter of (constituent).

(Constituent) asks whether the same Customs laws apply whether he sails or ships his yacht to the United States; whether the yacht is dutiable if it will be brought back to Germany after a trip in United States waters; and what period of time would his yacht be permitted to stay in the United States.

If the yacht enters the United States under its own power, the master of the vessel is responsible for reporting its arrival to a Customs officer within 24 hours after its arrival. The report should include the place of docking, the name of the boat, its master, its nationality and the time of arrival, and may be made by any means of communication, including radio. Customs officers at that time will consider the dutiable status of the boat. In addition if the boat has on board any article required by law to be entered, such article must be reported to a Customs officer within 24 hours after arrival. Except for a pilot, vessel agent, consular officer, or a Federal Customs, Coast Guard, Immigration or health officer, no person may board, or except for the purpose of reporting the boat's arrival, leave the boat prior to completion of Customs formalities without permission of the Customs officer in charge. Entry of the vessel will have to be made within 48 hours.

Yachts which arrive in the United States as cargo are not required to report arrival or make entry at their initial port of entry.

Yachts from the Federal Republic of Germany are eligible for cruising licenses. If a cruising license is obtained, a yacht that arrived under its own power may, after entering at its initial port of arrival, arrive at and depart from United States ports without entering, clearing or obtaining a permit to proceed to move between ports of the United States. A yacht which arrives as cargo, once placed in the waters, may also obtain a cruising license and its privileges. Report of arrival would be required at each United States port even for a vessel with a cruising license. If a cruising license is not obtained, the yacht would be required to comply with all appropriate navigation laws.

A cruising license should be obtained at either the district where the yacht enters the United States or, if the yacht was brought in as cargo, at the district where the vessel is launched.

As mentioned above, the dutiable status of a yacht or pleasure boat will be determined after its arrival in the United States. Pursuant to items 696.05 and 696.10, Tariff Schedules of the United States (TSUS), a yacht that is imported, i.e., on arrival is owned by a resident of the United States or is being brought in for sale or charter to a resident of the United States, is subject to duty. An imported yacht valued at not over $15,000 is dutiable at a rate of 1.8% and an imported yacht valued over $15,000 is dutiable at a rate of 3.3%.

Pursuant to item 812.30, TSUS, any person arriving in the United States who is not a returning resident thereof, but who has not come to the United States solely for pleasure cruising in the United States in the yacht and who will establish residence in the United States may make a claim for free entry under that item of a yacht imported in connection with his arrival and to be used in the United States only for the transportation of him, his family and guests, and such incidental carriage of articles as may be appropriate to his use of the vessel. However, pursuant to Headnote 1(b), Subpart A, Part 2, Schedule 8, TSUS, the imported yacht would be subject to forfeiture if sold, chartered or offered for sale or charter within one year of entry under item 812.30, TSUS, unless duty is paid beforehand.

Yachts or pleasure boats brought into the United States by non-residents thereof for their own use in pleasure cruising are not considered imported merchandise and are not subject to the provisions of TSUS applicable to yachts and pleasure boats (see Headnote 1(i), Subpart D, Part 6, Schedule 6, TSUS). The non-resident bringing in the yacht or pleasure boat must have come to the United States solely for pleasure cruising and not to establish residence in the United States. If such a yacht or pleasure boat is sold or chartered, or offered for sale or charter, to a resident of the United States at any time after arrival in the United States, it is subject to duty under items 696.05 or 696.10, TSUS.

There is no restriction on the period of time (constituent) may keep his yacht in the United States. Unless a foreign-flag yacht is in possession of a cruising license, it is subject to the usual requirements of navigation laws applicable to foreign vessels arriving at, departing from, or proceeding between ports of the United States (section 4.94(e), Customs Regulations). A cruising license, however, is valid for only six months and is renewable only in the discretion of the district director. If (constituent) wishes to keep his yacht here beyond the duration of a cruising license, he may do so, but the yacht would then be required to comply with the entry, clearance and permit to proceed requirements of the navigation laws.

(C.S.D. 83-88)

This ruling holds that the sewing operations combined with the washing and drying process of men's knit cardigan sweaters, performed in an insular possession, would constitute a substantial contribution to the manufacture of the finished product; therefore, resulting in a product of that insular possession for the purposes of General Headnote 3(a), TSUS

Date: June 16, 1983
File: CLA-2 CO:R:CV:VS
071303 FF

This is in reply to your letter dated April 20, 1983, concerning the applicability of General Headnote 3(a), Tariff Schedules of the United States (TSUS), to men's knit cardigan sweaters which you state will be produced in Guam from components purchased elsewhere. Samples representing both the merchandise to be imported into Guam and the merchandise to be exported to the United States from Guam were submitted with your letter.

You state that the merchandise to be imported into Guam (Exhibit A) will consist of two separate sleeve panels, two front panels with borders and pockets attached, and a rear panel; the front panels will already be attached to the rear panel along the shoulder seams. Based on a review of submitted Exhibit A, it appears that the borders to which you refer consist of one piece of knit fabric sewn both to the front panels and to the top of the back panel, thus constituting in effect two front plackets and a collarband of a completed garment. You indicate that the following operations will be performed on that merchandise in Guam in order to result in a completed sweater (Exhibit B) which will be imported directly into the United States:

1. The sleeves will be joined to the body of the sweater at the armholes.
2. The two side seams of each sweater will be sewn closed.
3. The sleeve seams will be sewn closed.
4. Buttonholes will be made in the left border or placket.
5. Buttons will be sewn to the right border or placket.
6. The sweater will be washed and dried to remove both natural oils and oils added prior to spinning the yarn and to achieve the desired fabric texture. You state that the washing and drying process is precisely controlled in terms of time and amounts of washing chemicals and softening agents used, that testing is required in Guam to determine the best washing and drying procedure for the particular yarn, and that the process is necessary to avoid the disagreeable odor of the oils and to cause the yarn to relax so that it will afford proper protection against the cold.
7. The sweaters will be pressed to size.
8. The sweaters will be bagged, boxed and packed.

It is your position that the processing to be performed on the merchandise imported into Guam will result in a substantial transformation so that the finished sweater may be considered to be a manufacture of Guam entitled to duty-free treatment under General Headnote 3(a), TSUS. You cite several court decisions and prior administrative rulings to support your position.

The administrative rulings cited in your letter involved somewhat different factual situations and, therefore, do not necessarily constitute precedents to support your position in the present case. Moreover, as concerns your basic argument that the processing performed on the subject merchandise in Guam will result in a substantial transformation into a new and different article, it is noted that neither General Headnote 3(a), TSUS, nor section 7.8, Customs Regulations, as such, sets for the substantial transformation as the basis for determining whether the processing of merchandise imported into an insular possession will result in a product of that insular possession within the meaning of the Headnote. Therefore, since the court decisions cited in your letter to support your argument did not involve merchandise imported under General Headnote 3(a), TSUS, they are not controlling in the present case.

It has been, and remains, our position that in order for merchandise imported into an insular possession to be considered a product of the insular possession, it must have been subjected to a substantial manufacturing process in that insular possession. As concerns the merchandise involved in the present case, we are of the opinion that the sewing operations, when combined with the washing and drying process, would constitute a substantial contribution to the manufacture of the finished product so as to result in a product of Guam for the purposes of General headnote 3(a), TSUS.

Accordingly, the merchandise in question, as represented by Exhibit B, will be entitled to duty-free treatment, provided that there is compliance with the value and other requirements set forth in General Headnote 3(a) and in section 7.8, Customs Regulations.

# U.S. Customs Service

## *Proposed Rulemaking*

(19 CFR Chapter I)

### Advance Notice of Proposed Customs Regulations Amendments Relating to Elimination of Sureties on Customs Bonds

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Customs is considering a revision of its bonding policy to eliminate the requirements in the Customs Regulations of having a surety on a Customs bond in certain instances. This change is being considered because the additional security of a surety appears in many cases to be unnecessary. Further, the increased costs of premiums, which are ultimately passed on to the consumer, may not be warranted in view of the minimal potential risks to the revenue of the United States. The public is invited to comment on the merits of the proposal and the various alternative ways in which the change of policy may be implemented. If it is finally decided to change the policy and eliminate the surety requirement on Customs bonds, numerous amendments to the Customs regulations will be necessary and will be the subject of a notice of proposed rulemaking published in the Federal Register.

DATES: Comments and requests for a public hearing must be received on or before December 13, 1983.

ADDRESS: Comments (preferably in triplicate) and requests for a public hearing should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: William Rosoff, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5856).

SUPPLEMENTARY INFORMATION:

#### Background

The contract of suretyship is an agreement whereby one person binds himself to answer for the debt, default, or miscarriage of an-



416-603 O - 83 -10

other. Every suretyship contract involves three parties known as the principal, the surety, and the creditor.

The principal is the person for whose account the contract is made and whose debt or default is the subject of the transaction. With respect to Customs transactions the principal is an importer, broker, carrier, cartman, lighterman, warehouse proprietor, public gauger, or some other person engaging in a Customs transaction.

The one to whom the debt or obligation runs, the obligee in suretyship, is called the creditor. In the case of Customs transactions the creditor is the U.S. Customs Service.

The surety is the person who agrees that the debt or obligation running from the principal to a creditor shall be performed and who undertakes on its own part to perform it if the principal does not. The surety receives a fee from the principal for undertaking the responsibility. This fee is known as a premium.

In the case of Customs transactions, suretyship generally is a lending of credit for a fee to aid a principal who has insufficient credit or financial resources on its own, and is a direct contract to pay the principal's debt or perform his obligation in case of the principal's default. The contract is created for the protection of the creditor, the U.S. Customs Service, to whom the surety obligates himself. Customs is, therefore, the person with whom the surety contracts and the beneficiary of the surety's obligations rather than the principal.

When merchandise, other than noncommercial merchandise, accompanying a traveler arrives in the United States, it ordinarily remains in Customs custody until the importer, consignee, or the authorized agent of either, establishes ownership and complies with the applicable Customs laws and regulations or laws and regulations enforced by Customs for other Federal and State agencies. In some instances, especially in the case of duty-free noncommercial importations, the merchandise may be released to the importer, consignee, or an authorized agent merely upon furnishing proof of ownership, and no formal documentation is required. However, in most cases involving commercial importations, the presentation to Customs of formal documentation is required to obtain release of the merchandise. The Customs transaction releasing the merchandise to the importer is referred to as an "entry".

As a part of the entry documentation, the importer, consignee, or an authorized agent usually is required to file with Customs a bond with an approved surety. The bond, among other things, guarantees that proper entry, with payment of estimated duties and taxes when due, will be made for imported merchandise and that any additional duties and taxes subsequently found to be due will be paid. The bond also guarantees redelivery of imported merchandise to Customs custody for examination or inspection if found not to comply with applicable laws and regulations. Redelivery may be required as a result of a failure to properly mark, label, clean, or fumigate the imported merchandise; or a failure to destroy or export the imported merchandise, if appropriate.

A bond with appropriate surety also may provide, as a condition of its satisfaction, for the production of any missing invoices, declarations, certificates, or other documents required in connection with the entry of imported merchandise, in the form and within the time required.

Bonds with surety are used to secure other Customs transactions besides those of importers. For example, carriage of imported merchandise that has not been examined or appraised by Customs must be secured by a Customs bond to guarantee performance of various Customs obligations. Those performance bonds are required from bonded carriers, bonded cartage and lighterage operators, and persons who are authorized to carry merchandise when bonded carrier facilities are not reasonably available. Among other things, those persons are contractually bound to safely deliver that merchandise to Customs at the destination. They are bound to report arrival of the merchandise to Customs at the destination so that it can be examined for Customs purposes and they are bound not to deliver that merchandise to the ultimate consignee until Customs determines that it can be released. If the bond principal fails to perform as agreed, the principal and surety become liable for payment to Customs of liquidated damages. The demand for liquidated damages is initially made on the principal and if the principal fails to pay the liquidated damages claim a demand is made upon the surety for payment.

A similar bonding situation exists for persons who operate Customs bonded warehouses, container stations, and foreign-trade zones. A bond, with surety, from these people is needed to protect the Government from loss. Generally, imported merchandise is placed in such places before the amount of duty due has been determined. Moreover, until that merchandise is withdrawn for consumption, no duty is paid by the importer. The bond given by such persons serves as a guarantee that the stored merchandise will be kept safely and that it will be released only when authorized by Customs.

Other bonds are required in special instances. For example, persons who use the accelerated drawback program are required to file a bond with appropriate surety to guarantee repayment of any money erroneously paid. Another special bond is that required of copyright owners who claim that an imported article infringes that copyright and request Customs to detain that article pending a final determination on the infringement claim. That bond insures that any damage caused to the importer by an erroneous detention will be compensated for by the copyright owner claiming infringement.

Presently, there are approximately 50 different forms of Customs bonds in use, all of which require a surety. Part 113, Customs Regulations (19 CFR Part 113), sets forth a description of the various bonds and the general requirements applicable to Customs bonds including the surety requirements. It contains the general authority and powers of the Commissioner of Customs to require bonds,

the classes of bonds, procedures for their approval and execution, general and special bond requirements, requirements which must be met to be either a principal or a surety, requirements concerning the production of documents, and the authority and manner of assessing damages and of cancelling the bond or charges against a bond.

The statutory authority for requiring bonds with surety is found in section 623, Tariff Act of 1930, as amended (19 U.S.C. 1623). Section 623 provides that in any case in which a bond or other security is not specifically required by law, the Secretary of the Treasury may by regulation or specific instruction require, or authorize Customs officers to require, such bonds or other security as may be deemed necessary for the protection of the revenue or to assure compliance with any provision of law, regulation, or instruction which the Secretary or the Customs Service may be authorized to enforce.

The above authority has been relied upon for promulgating regulations requiring bonds with surety for most Customs transactions. However, in three instances there is specific statutory authority for a bond with surety to cover the Customs transaction involved.

Section 555, Tariff Act of 1930, as amended (19 U.S.C. 1555), relating to bonded warehouses, provides that before any imported merchandise not finally released from Customs custody shall be stored in bonded warehouses, the owner or lessee of the warehouse shall give a bond in such amount and with such sureties as may be approved by the Secretary, to secure the Government against any loss or expense connected with or arising from the deposit, storage, or manipulation of merchandise in the warehouse.

Section 608, Tariff Act of 1930, as amended (19 U.S.C. 1608), relating to claims of an interest in seized vessels, vehicles, merchandise or baggage, indicates that a bond to pay court costs of condemnation proceedings shall be given by the claimant with sureties approved by Customs.

Section 463, title 22, United States Code (22 U.S.C. 463), provides that the owners or consignees of every armed vessel sailing out of U.S. ports or under the jurisdiction of the U.S., belonging wholly or in part to a U.S. citizen, shall, before clearing, give a bond to the U.S. with sufficient sureties, in double the amount of the value of the vessel and cargo on board, including her armament, conditioned that the vessel shall not be employed by the owners to cruise or commit hostilities against the subjects, citizens, or property of anyone with whom the U.S. is at peace.

With the exception of the above three provisions, the requirement for a surety on a Customs bond is established by regulation. Customs has for many years imposed this regulatory requirement upon all segments of the importing community. The cost of premiums charged by the surety industry is an expense to the importing community which increases its cost of doing business and is ultimately passed on to the consumer. The additional security of a surety appears in many cases to be unnecessary. This is particular-

ly true with respect to importers who have done business with Customs for many years without problems. The type of merchandise imported is also a significant factor in determining the potential risk to the revenue.

Customs is considering revision of its existing bond policy to eliminate the requirements in the Customs Regulations of having a surety on a Customs bond in certain instances. The purpose of this notice is to afford the public a meaningful opportunity to participate at an early stage in the development of this proposal by submitting comments on the merits of the proposal, the alternative ways set forth in this document for implementation of this change of policy and by suggesting additional alternatives to those presented.

Numerous alternative approaches are possible. The complete elimination of sureties other than on bonds taken pursuant to the three statutory provisions set forth above which require surety is one possible approach. Customs bonds would then be submitted with only the signature of the principal. The principal would be solely responsible for the performance of the bond conditions and solely liable for their breach. If this approach is adopted, Customs would probably seek legislation eliminating the statutory requirement for surety under 19 U.S.C. 1555 and 1608, and 22 U.S.C. 463. If this approach is adopted the question arises as to whether or not Customs should seek legislation to require a fee to accompany each bond which would be placed in a fund to compensate the Government for any loss resulting from breach of the bond conditions by principals. If such a fund is established the fee could be either a flat fee per bond or a fee based upon the dollar amount of the bond. In either event Customs contemplates that any fee would be substantially less than the present premium charges of surety companies and would result in substantial savings to principals. If a fee is charged the fee would be periodically adjusted based upon the loss resulting from breach of the bond conditions by principals. In order to insure that substantial increases in any fee does not occur, and unjustly cause increases in fees to principals who satisfactorily perform under the bond, if this approach is adopted, Customs would vigorously pursue collection action against principals who breach bond conditions.

Another option is to eliminate the requirement for a surety on bonds less than a set monetary amount. Pub. L. 83-243 (67 Stat. 517) requires that all commercial imports valued over $250 be covered by a formal entry. Section 142.4, Customs Regulations (19 CFR 142.4), provides that, with certain exceptions, merchandise shall not be released from Customs custody at the time Customs receives the entry documentation or the entry summary documentation which serves as both the entry and the entry summary, unless covered by a bond secured by an approved corporate surety or secured by cash deposits or obligations of the United States.

While the imposition of bonding and surety requirements may be necessary both in terms of import control and revenue protection

for large commercial shipments, Customs believes that the same rationale does not apply to small shipments (e.g, those valued less than $1,000).

Customs estimates that it would cost an inexperienced importer attempting to import a duty-free, unrestricted, commercial shipment valued at $300, approximately $100 for a customs broker's fees and for use of the broker's surety-backed bond.

The $250 formal entry limit has been in existence since 1953 without any upward adjustment for inflation. If the limit had been adjusted for price changes, it would have been $1,144 in September 1982 (based on the International Monetary Fund's unit value index of U.S. general imports). Accordingly, if the requirement for a surety bond were to be applied only to entries valued over $1,000 (or perhaps somewhat above $1,000), the actual risk to the Government would not be any greater (relatively) than under the $250 formal entry limit of 1953.

Since February 4, 1980, the North Central Customs Region has been conducting a pilot program of accepting formal entries valued not more than $1,000 without surety or the required bond. The program has been running smoothly with no incidents requiring redelivery of merchandise or the imposition of a penalty.

For the foregoing reasons, Customs believes that there is no justification in terms of cost benefit or public service to support the continued imposition of the bonding requirement for entries valued less than $1,000. Instead, Customs believes that its regulations could be amended to eliminate the necessity of providing bonds supported by surety or cash deposit on small value shipments which, by law, require a formal entry.

While cost data has not been developed for amounts greater than $1,000, Customs would appreciate receiving comments from interested parties on the above alternative and amounts greater than $1,000 (e.g. $5,000, $10,000).

The use of cash or monetary obligations of the Government as an alternative to a surety could be used to eliminate sureties even on bonds where a surety is specifically required by statute. This option is specifically authorized by section 623(e), Tariff Act of 1930, as amended, (19 U.S.C. 1623(e)), which provides that the Secretary of the Treasury is authorized to permit the deposit of money or obligations of the United States, in such amount and upon such conditions as he may by regulation prescribe, in lieu of sureties on any bond required or authorized by a law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce.

Use of this option would bypass the need to have legislation amending 19 U.S.C. 1555 and 1608, and 22 U.S.C. 463.

Another alternative providing for elimination of sureties on importer's bonds could be based on an assessment of each importer's reliability. Features of this alternative would include standards for making that assessment. For example, an importer might not be eligible unless the importer had at least one entry per week for a

52-week period. Additional eligibility requirements could be prompt payment of all Customs bills and full compliance with all entry requirements such as the prompt redelivery for exportation of inadmissible merchandise on demand during the same 52-week period. Other requirements might be the absence of violations of the Customs laws and other laws and regulations administered by Customs. Similar requirements would be established for individuals engaged in other classes of Customs transactions (e.g. cartmen, lightermen, warehouse proprietors, etc.)

An alternative providing for elimination of sureties on bonds securing specific types of merchandise or transactions could apply to importations of merchandise that has been examined by Customs, importations of duty-free merchandise, importations of merchandise on which no issue of admissibility exists, and importations below a certain value.

Another option would be for Customs to retain the present bonding system but offer importers and other persons engaged in transactions with Customs for which a bond is required the alternative of using a contract surety. Participation in this program would be completely voluntary. Under this alternative Customs would enter into a contract with a commercial surety under the procurement regulations to act as surety for substantially all Customs transactions at rates Customs believes would be significantly below rates currently offered. If the party engaging in a Customs transaction desire to use this alternative method, it would, at the time the bond is normally filed for the type of transaction involved, indicate that it wanted to use the contract surety. By contract with the surety, Customs would collect the premium payments and turn them over to the surety on a periodic basis. Under the terms of the contract between the surety and Customs, the surety would make payments to Customs for breaches of the bond obligations. The surety would engage in the normal collection efforts of any commercial surety to recover sums paid out to Customs.

Other alternative approaches in addition to the above obviously exist. Commenters are invited to propose these alternatives in their comments and discuss the manner in which the proposed alternatives can be implemented.

### Executive Order 12291

This document will not result in a regulation which is a "major rule" as defined by section 1(b) of Executive Order 12291. Accordingly, a regulatory impact analysis is not required.

### Regulatory Flexibility Act

It appears that the rule, if promulgated, may have a significant economic impact on a substantial number of small entities, and thus require an initial regulatory flexibility analysis in accordance with the provisions of section 3 of the Regulatory Flexibility Act (the "Act") (5 U.S.C. 603). The Customs office responsible for the preparation of the analysis under the Act is in the process of deter-

mining whether such an analysis is indeed necessary. Accordingly, if it is decided to proceed with this matter, the notice of proposed rulemaking will (1) have as an attachment the initial regulatory flexibility analysis or (2) contain a certification by the Secretary of the Treasury that the analysis is not, in fact, required by the Act.

### Comments

Before proceeding to a notice of proposed rulemaking on this proposal, consideration will be given to any written comments, preferably in triplicate, that are submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

If the commenters indicate interest in a public hearing, one will be held. Written requests for a public hearing should be directed to the Regulations Control Branch at the above address. Only commenters on this notice will be authorized to participate in the public hearing. If a public hearing is held, notice of the time and place will be published in the Federal Register.

### Authority

This document is issued under the authority of R.S. 251, as amended (19 U.S.C. 66), and sections 623, as amended, 624, 46 Stat. 759 (19 U.S.C. 1623, 1624).

### Drafting Information

The principal author of this document was John E. Elkins, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,
*Commissioner of Customs.*

Approved: October 3, 1983.
John M. Walker, Jr.,
*Assistant Secretary of the Treasury.*

[Published in the Federal Register, October 14, 1983 (48 FR 46805)]

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(19 CFR Part 4)

## Advance Notice of Proposed Customs Regulations Amendments Relating to the Entry and Clearance of Vessels

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: There has been a lack of uniformity in the application of the entry and clearance requirements of the navigation laws to vessels engaged in the lightering of import and export cargo between the United States and vessels located beyond the territorial waters of the United States. Customs has under consideration the clarification of the applicability of these requirements to vessels engaged in the following transactions:

1. Transporting (by foreign or American lighters and other vessels) export merchansdise out of the United States to be transshipped at a point on the high seas to usually larger vessels that will be engaged in the transportation of the export merchandise to a foreign country.

2. Transporting (by American lighters and other vessels) import merchandise to the United States after transshipment on the high seas from usually larger vessels that have engaged in the transportation of the import merchandise to that point from a foreign country (foreign lighters and other vessels engaged in this type of movement are uniformly now subject to the entry requirements of the navigation laws).

The public is invited to submit written comments on the merits of this clarification, offer alternative approaches, and suggest other areas relating to this subject which Customs should consider.

DATES: Comments should be received on or before December 13, 1983.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Edward B. Gable, Jr., Carriers, Drawback & Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

## Background

Formal entry of a vessel is now required by section 434 (if an American vessel) or section 435 (if a foreign vessel), Tariff Act of 1930, as amended (19 U.S.C. 1434, 1435). These entry requirements of the navigation laws are derived from provisions of the Act of March 2, 1799 (e.g. section 2774, Revised Statutes of the United States). Regulations implementing these entry requirements are set forth in sections 4.3 and 4.9, Customs Regulations (19 CFR 4.3, 4.9). Clearance of a vessel is required by section 4197, Revised Statutes, as amended (46 U.S.C. 91). This requirement is derived from section 93 of the Act of March 2, 1799. Regulations implementing these clearance requirements are set forth in section 4.60, Customs Regulations (19 CFR 4.60).

These vessel entry and clearance requirements of the navigation laws are basic to the proper discharge of primary missions of Cus-

toms (i.e., (1) assessment and collection of import duties and taxes, and (2) control of carriers, persons, and articles entering or departing the United States and the enforcement of statutory restrictions and prohibitions). Clarification of the applicability of the entry and clearance requirements is considered necessary because of technological advances in water transportation and in the transportation of cargo since the Act of March 2, 1799. This is especially true in recent years with the increased use of vessels to transport import and export cargo between the United States and foreign countries via locations on the high seas beyond the territorial waters of the United States. At those locations the import and export cargo is transshipped to and from lighters and other vessels arriving from and departing for the United States with the cargo.

Section 434, Tariff Act of 1930, as amended (19 U.S.C. 1434) uses the language "arriving in the United States from a foreign port or place" and section 4197, Revised Statutes, uses the term "bound to a foreign port." Clarification of these phrases is essential to a proper application of the law. For example, the question has been raised as to whether the statutory language is applicable to lighters and other vessels arriving in the United States with import cargo transshipped from a vessel on the high seas or bound out of the United States with export cargo for transhipment to a vessel on the high seas.

If the entry and clearance requirements of the navigation laws are not applicable to lighters and other vessels transporting import and export cargo in and out of the United States from and to vessels located on the high seas, it would be, at least theoretically, possible for the bulk of the import and export cargo of the United States to be transported in vessels not subject to statutory entry and clearance requirements upon arrival at or departure from the United States. This would clearly be contrary to the legislative purpose sought to be accomplished by the entry and clearance requirements of the navigation laws and would create severe problems for Customs in carrying out the missions of the agency.

The proposed clarification of the term "foreign place" in section 434, Tariff Act of 1930, as amended, as including a place on the high seas where import cargo will be transshipped to a lighter or other vessel for shipment to the United States will permit uniform application of the entry requirements of the navigation laws to all vessels actually arriving in the United States with import cargo. The clarification will not mean that the entry requirements of the navigation laws of the United States will be applied to vessels transporting import cargo from foreign ports or places to the locations on the high seas.

The proposed clarification of the term "foreign port" in section 4197, Revised Statutes, as amended, as including a place on the high seas where export cargo will be transshipped from a lighter or other vessel for shipment to a foreign country, in Customs opinion, must be read in conjunction with section 4201, Revised Statutes (46 U.S.C. 96), prescribing the form of clearance to be granted a vessel

on departure "to a foreign port or place," and in conjunction with title 13, United States Code, sections 301–307, as amended, providing for the collection of detailed statistics or imports into and exports from the United States. The clarification will permit uniform application of the clearance requirements of the navigation laws to all vessels actually departing the United States with export cargo. The clarification will not mean that the clearance requirements of the navigation laws of the United States will be applied to vessels transporting export cargo laden at locations on the high seas for shipment to foreign ports or places.

It is believed that comments by the United States Court of International Trade in *Mount Washington Tanker Company, a Subsidiary of Victory Carriers, Inc.* v. *United States,* 505 F. Supp. 209, 1 CIT 32, are pertinent to the proposed clarification of the entry and clearance laws. In that case the Court considered certain language in section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), a statute which provides, in part, for dutiability of "the expenses of repairs made in a foreign country" upon certain vessels. The facts in the case show that employees of a foreign vessel repair corporation were flown to the vessel from the foreign country. They then travelled with the vessel for a month and a half performing numerous repairs to the vessel while it was on the high seas. One of the issues before the Court was whether the repairs made on the high seas by the employees of the foreign vessel repair corporation were dutiable within the meaning of the statutory language providing for duty on "the expenses of repairs made in a foreign country." The Court held that the repairs made on the high seas by the employees of the foreign corporation, flown from the foreign country to the vessel for the purpose of making the repairs, were dutiable.

In reaching its conclusion in the *Mount Washington* case, the Court cited *Procter & Gamble Manufacturing Co.,* v. *United States,* 19 CCPA 415, *cert. denied,* 287 U.S. 629, 53 S. Ct. 82 (1932), which states, in part, that when "It appears that a literal interpretation of the statute involved would produce a result contrary to the apparent legislative intent, then the letter of the statute must yield and the legislative intent be carried out." In the *Procter & Gamble* case, the issue raised was whether whale oil produced aboard a Norwegian ship and brought into the United States was dutiable under a statute providing for duty "upon all articles when imported from any foreign country." In affirming the lower Court's holding that the statute included importations from the high seas, the United States Court of Customs and Patent Appeals, citing the Supreme Court case of *Burnett* v. *Chicago Portrait Co.,* 285 U.S. 1, 52 S. Ct. 275, (1932), stated:

> There is no hard and fast definition for the term 'foreign country,' as it appears in the acts before us. Such meaning

may be broad or narrow, as the apparent intent of the statute requires.

The Court also cited *The Brig Concord,* 13 U.S. (9 Cranch) 387 (1815), where the Supreme Court held that goods, captured on the high seas by an American privateer from a neutral Spanish ship, were dutiable when brought into the United States to be commingled and sold in the commerce of the United States.

The Court in *Mount Washington* stated that the *Procter & Gamble* and *Brig Concord* cases "demonstrate clearly that the courts are mindful of the legislative purpose sought to be accomplished by the tariff laws of the United States. Indeed, the Court of Customs and Patent Appeals in *Procter & Gamble* noted that: 'If this language (foreign country) were to be literally construed, therefore, goods that come from the high seas might seem not to be imported from a foreign country, for the high seas are the common property of all nations and the exclusive property of none.'" the Court went on to state "it is clear that in interpreting the meaning of statutory terms used in tariff laws the courts have not been inflexible, but have striven to effectuate the animating purpose of the legislation."

The Court in *Mount Washington* stated in its conclusion that "were the statutory language 'foreign country' to exclude the high seas from its ambit, the legislative purpose of section 1466 would be frustrated. It is apparent from a reading of all the cases cited * * * that the courts, in all instances, have furthered, not frustrated the legislative purpose of the statutes under examination. The cases reveal that the interpretation of the words 'foreign country' is based upon the courts' understanding of the purpose and intent which underlie the governing statutes. In the words of Mr. Justice Reed in *United States* v. *Spelar,* 338 U.S. 217, 221 (1949), 'the legislative will must be respected.' Thus to fulfill the legislative intent the term 'foreign country' has been interpreted to mean a place foreign to or outside the territorial limits of the United States * * *.

That the term 'foreign country' has no definitive meaning, apart from its statutory setting, may also be gleaned from the concurring opinion of Mr. Justice Frankfurter in *Spelar,* in which he stated that:

> 'To assume that terms like 'foreign country' and 'possessions' are self-defining, not at all involving a choice of judicial judgement, is mechanical jurisprudence at its best. These terms do not have fixed and inclusive meanings, as is true of mathematical and other scientific terms. Both 'possessions' and 'foreign country' have penumbral meanings, which is not true, for instance, of the verbal designations for weights and measures. It is this precision of content which differentiates scientific from most political, legislative and legal language.

* * * To exclude the high seas from the statutory words 'foreign country' in the present case * * * would frustrate the legislative purposes" * * *

## Comments

Before proceeding to a notice of proposed rulemaking on this matter, Customs invites written comments from all interested parties on the clarification under consideration and on suggestions of related areas which should be studied. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

If after the comments are received and analyzed, it is determined to proceed, a notice of proposed rulemaking will be published in the Federal Register providing interested parties ample opportunity to submit written comments on specific proposals for regulatory amendments.

## Executive Order

This document will not result in a regulation which is a "major rule" as defined in section 1(b) of Executive Order 12291. Accordingly, no regulatory impact analysis has been prepared.

## Regulatory Flexibility Act

It appears that the rule, if promulgated, may have a significant economic impact on a substantial number of small entities, and thus requires an initial regulatory flexibility analysis in accordance with the provisions of section 3 of the Regulatory Flexibility Act ("the Act") (5 U.S.C. 603). A determination will be made whether such an analysis is indeed necessary. Accordingly, if it is decided to proceed with this matter, the notice of proposed rulemaking will have (1) as an attachment the initial regulatory flexibility analysis or (2) a certification by the Secretary of the Treasury that the analysis is not, in fact, required by the Act.

## Authority

This document is issued under the authority of R.S. 251, as amended (19 U.S.C. 66), sections 2, 3, 23 Stat. 118, as amended, 119, as amended (46 U.S.C. 2, 3), section 624, 46 Stat. 759, as amended (19 U.S.C. 1624).

## List of Subjects in 19 CFR Part 4

Customs duties and inspection, Exports, Freight, Harbors, Imports, Maritime Carriers, Reporting and Recordkeeping Requirements, Vessels.

DRAFTING INFORMATION

The principal authors of this document were Edward Gable, Carrier Rulings Branch, and John Elkins, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

WILLIAM VON RAAB,
*Commissioner of Customs.*

Approved: October 3, 1983.
JOHN W. WALKER, JR.,
*Assistant Secretary of the Treasury.*

[Published in the Federal Register, October 14, 1983 (48 FR 46808)]

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(19 CFR Parts 18, 123, 144)

Transportation of Merchandise in Bond

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to provide more control over imported merchandise transported in bond from the port of entry to the port of destination or port of exportation. In-bond transportation means the merchandise is moved under contract (bond) guaranteeing delivery to Customs and payment of duties and taxes. With few exceptions, existing regulations do not set a time for the receipt and delivery of in-bond merchandise by a forwarding carrier, or notification to Customs of the arrival of the merchandise at the port of destination or exportation. As a result, the security of that merchandise is jeopardized. These proposed amendments would establish time periods for the receipt, delivery, and notification to Customs of arrival of imported merchandise transported in bond within the United States. The proposal also provides that presentation to Customs of the in-bond document accompanying the merchandise will be acceptable as proof of delivery, and that the new in-bond control system will be applicable to truck shipments of in-bond merchandise transiting the United States to Canada or Mexico.

DATES: Comments must be received on or before December 13, 1983.

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C 20229.

FOR FURTHER INFORMATION CONTACT: Operational aspects: J. Bradley Lund, Office of Inspection and Control (202-566-5354); Entry aspects: Jerry Laderberg, Entry Procedures and Penalties Division (202-566-5765); Bond aspects: William Lawlor, Carriers,

Drawback and Bonds Division (202-566-5856); U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

## Background

Under sections 552 and 553, Tariff Act of 1930, as amended (19 U.S.C. 1552, 1553), any merchandise arriving at a port of entry in the United States, other than explosives and merchandise the importation of which is prohibited, may be entered without appraisement or payment of Customs duty for: (1) transportation in bond to any other port of entry; or (2) transportation in bond through the United States for exportation. Either transportation must be made under the rules and regulations prescribed by the Secretary of the Treasury, most of which are set forth in Part 18, Customs Regulations (19 CFR Part 18).

The Customs Regulations do not specifically provide for the time of receipt, delivery, or notification to Customs of arrival of merchandise transported in bond, except for transit air cargo and merchandise being transported for exportation (sections 6.21 and 18.20, Customs Regulations (19 CFR 6.21, 18.20)). As a result, the security of the merchandise and compliance with Customs laws are jeopardized. Therefore, on August 13, 1976, a notice of proposed rulemaking was published in the Federal Register (41 FR 34271), to amend Part 18, and sections 123.42, 123.64, 144.36, 144.37, Customs Regulations (19 CFR Part 18, sections 123.42, 123.64, 144.36, 144.37), to establish time limits of general applicability for the handling of in-bond movements of imported merchandise. However, due to the passage of time and events subsequent to the publication of that notice, it has been decided not to proceed with a final rule at this time, but to publish this second notice of proposed rulemaking and again solicit public comment in the matter.

Accordingly, this notice proposes to amend section 18.2(a), Customs Regulations, to provide that within 5 working days after presentation of an entry for merchandise to be transported in bond, the forwarding carrier would be required to take receipt of the merchandise provided the lay order period or any extension of that period had expired and no other entry had been filed. If the forwarding carrier failed to take receipt of the merchandise in the required period, the transportation entry would be canceled and the merchandise treated as unclaimed as of the date of original arrival.

The notice also proposes to amend section 18.2(c), Customs Regulations, to provide that, except for transit air cargo provided for in section 6.21, Customs Regulations, bonded merchandise destined to a final port in the United States, or for exportation from the United States, would be required to be delivered to Customs at the port of destination or exportation within 30 days, if transported by land, or within 60 days if transported on board a vessel in the U.S. coastal trade, after the date of receipt by the forwarding carrier at

the port of origin. Failure to comply with this time limit would constitute an irregular delivery and subject the initial bonded carrier to penalties under section 18.8, Customs Regulations.

Furthermore, it is proposed to amend sections 18.2(d) and 18.7(a), Customs Regulations, to require a carrier delivering bonded merchandise to surrender the in-bond manifest to the district director within 2 working days, after arrival of any portion of the in-bond shipment at the port of destination or delivery of the merchandise to the exporting carrier at the port of exportation. As noted above, failure to comply with this time limit would constitute an irregular delivery and subject the initial bonded carrier to applicable penalties under section 18.8, Customs Regulations.

In addition to these time limits, this notice proposes an amendment to section 18.8, Customs Regulations, to provide that an acceptable proof of proper delivery of bonded merchandise to Customs at the port of destination or exportation would be a properly receipted copy of the in-bond document (the appropriate Customs Form 7512 or 7520, or the TIR carnet). It is proposed to amend section 18.2(b), Customs Regulations, to provide that the in-bond document and Customs control card (Customs Form 7512-C, Transportation Entry of Manifest of Goods) be prepared by the carrier, shipper, or customhouse broker whenever merchandise is being transported in bond. The Customs in-bond document may be signed by the carrier, customhouse broker, or agent of the carrier.

Customs Form 7512-C previously consisted of a two-part (identical) carbon set. The new Customs Form 7512-C also is a two-part carbon set but the parts are not identical. It is proposed to amend the Customs Regulations by deleting the words "in duplicate" after the words "Customs Form 7512-C" wherever they appear and to substitute the word "destination" for "duplicate" wherever that word appears in the Customs Regulations in reference to the second part of Customs Form 7512-C. Several other editorial changes and conforming amendments also are proposed to Part 18, Customs Regulations.

These proposed amendments to the general provisions contained in sections 18.1-18.8, Customs Regulations, for transportation in bond would apply to (1) merchandise in transit through the United States to foreign countries (sections 18.20-18.24, Customs Regulations), and (2) merchandise withdrawn from warehouse for transportation or transportation and exportation (sections 144.36 and 144.37, Customs Regulations).

The proposed in-bond control system also would apply to baggage in transit from port-to-port in Canada or Mexico through the United States (section 123.64, Customs Regulations). The proposal is also applicable to an in-bond control system of truck shipments transiting the United States, except when otherwise provided, by adding a new paragraph to section 123.42, Customs Regulations.

## Authority

The authority for the proposed amendments is R.S. 251, as amended, sections 552, 553, 557, 623, 624, 46 Stat. 742, as amended, 744, as amended, 759, as amended (19 U.S.C. 66, 1552, 1553, 1557, 1623, 1624).

## Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), from 9:00 a.m. to 4:30 p.m. on normal business days, at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

## E.O. 12291 and Regulatory Flexibility Act

It has been determined that the proposed amendments are not a "major rule" within the criteria provided in section 1(b) of E.O. 12291, and therefore no regulatory impact analysis is required.

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), it is hereby certified that the regulations set forth in this document, if promulgated, will not have a significant economic impact on a substantial number of small entities. Accordingly, these regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

## Drafting Information

The principal author of this document was Todd J. Schneider, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

## List of Subjects

19 CFR Part 18

Common carriers, Customs duties and inspection, exports, freight forwarders, imports, surety bonds.

19 CFR Part 123

Canada, Mexico, motor carriers.

19 CFR Part 144

Warehouses.

## Proposed Amendments

It is proposed to amend Parts 18, 123, and 144, Customs Regulations (19 CFR Parts 18, 123, 144), in the following manner:

416-603 O - 83 -11

## Part 18—Transportation in Bond and Merchandise in Transit

1. Paragraph (a)(1), the first sentence of paragraph (b), and paragraphs (c) and (d) of section 18.2 would be [revised] to read as follows:

**§ 18.2 Receipt by carrier; manifest.**

(a)(1) *Merchandise other than from warehouse delivered to bonded carrier.* Except as set forth in subparagraph (2) of this section, within 5 working days after presentation of an entry for merchandise to be transported in bond, the forwarding carrier shall take receipt of the merchandise if any lay order period and extension thereof have expired and no other entry is filed. If the forwarding carrier fails to take receipt of the merchandise within the prescribed period, the transportation entry shall be canceled and the merchandise shall be treated as unclaimed as of the date of original arrival.

(2) When merchandise is delivered to a bonded carrier for transportation in bond, the merchandise shall be laden on the conveyance under supervision of a Customs officer unless—

(i) The transporting conveyance is not to be sealed with Customs seals, or

(ii) The lading inspector accepts the check of the carrier as to the merchandise laden. The carrier's receipt shall be given immediately to the lading inspector on the Customs in-bond document (the appropriate Customs Form 7512 or 7520, or the TIR carnet) covering the merchandise. In the case of a carnet, the receipt shall be given on the appropriate vouchers in the following form:

> Received the cargo listed herein for delivery to Customs at the indicated port of destination or exportation, or for direct exportation.
>
> Name of Carrier (or Exporter) ———————
>
> Attorney-in-fact or Agent of Carrier (or Exporter) ———————
>
> Date ———————

(b) A Customs in-bond document, containing a description of the merchandise, and Customs control card (Customs Form 7512–C), shall be prepared by the carrier, shipper, or customhouse broker whenever merchandise is being transported in bond. The Customs in-bond document shall be signed by the carrier, customhouse broker, or agent of the carrier. * * *

(c)(1) After the merchandise has been laden and the in-bond carrier or his agent has receipted the in-bond document, either Customs Form 7512 or 7520 (in duplicate), or the carnet, together with the related Customs Form 7512–C (destination), shall be delivered as a manifest to the conductor, master, or person in charge to accompany the merchandise to its port of destination or exportation.

If more than one conveyance is used to transport merchandise, the Customs Form 7512-C (destination) shall accompany the first conveyance, and two copies of Customs Form 7512 shall accompany each conveyance as a manifest of the merchandise transported by that conveyance. A TIR carnet (see section 18.3(b)) shall not be used if more than one conveyance is required.

(2) Except transit air cargo provided for in section 6.21 of this chapter, bonded merchandise destined to a final port of destination in the United States, or for export from the United States, shall be delivered to Customs at the port of destination or exportation within 30 days after the date of receipt by the forwarding carrier at the port of origin, if transported on land. If the merchandise is transported on board a vessel engaged in the United States coastal trade, delivery to Customs at the port of destination or exportation shall be within 60 days after the date of receipt by the forwarding carrier at the port of origin. Failure to deliver the merchandise within the prescribed period shall constitute an irregular delivery and the initial bonded carrier shall be subject to applicable penalties (see section 18.8).

(d) Promptly, but no more than 2 working days, after the arrival of any portion of the in-bond shipment at the port of destination, the delivering carrier shall surrender the in-bond manifest (the in-bond document and related Customs Form 7512-C (destination)) to the district director as notice of arrival of the merchandise. If the in-bond manifest is lost in transit, the in-bond carrier shall report the arrival of the merchandise within the prescribed period and shall be responsible for obtaining copies of the original in-bond manifest. Failure to surrender the in-bond manifest or report the arrival of bonded merchandise within the prescribed period shall constitute an irregular delivery and the initial bonded carrier shall be subject to applicable penalties (see section 18.8).

2. Paragraph (b) of section 18.3 would be revised to read as follows:

**§ 18.3 Transshipment; transfer by bonded cartmen.**

* * * * * * *

(b) When bonded merchandise, other than merchandise covered by a TIR carnet, is to be transshipped to more than one conveyance, the carrier, agent of the shipper, customhouse broker, or forwarder shall prepare for each such conveyance, two additional copies of the Customs Form 7512 which accompanied the merchandise to the place of transshipment. The Customs Form 7512 and Customs Form 7512-C (destination) which accompanied the shipment to the place of transshipment shall be presented to the district director there. The Customs officer supervising the transshipment shall execute a certificate of transfer on all copies of the Customs Form 7512. The original copies of the Customs Form 7512 and the related Form 7512-C (destination) shall be delivered to the con-

ductor, master, or person in charge of the first conveyance. Two additional copies of the Customs 7512 shall be delivered to the person in charge of each additional conveyance in which the merchandise is forwarded for delivery to the district director at the port of destination or exportation.

3. Paragraph (a) of section 18.7 would be revised to read as follows:

**§ 18.7 Lading for exportation, verification of.**

(a) Promptly, but no more than 2 working days, after arrival of any portion of the in-bond shipment at the port of exportation, the delivering carrier shall surrender the in-bond manifest (the in-bond document and related Customs Form 7512-C (destination)) to the district director as notice of arrival of the merchandise. If the in-bond manifest is lost in transit, the in-bond carrier shall report the arrival of the merchandise within the prescribed period and shall be responsibile for obtaining copies of the original in-bond manifest. Failure to surrender the in-bond manifest or report the arrival of bonded merchandise within the prescribed period shall constitute an irregular delivery and the initial bonded carrier shall be subject to applicable penalties (see section 18.8).

* * * * * * *

4. Paragraph (a) of section 18.8 would be revised to read as follows:

§ 18.8 Liability for shortage, irregular delivery, or nondelivery; penalties.

(a) The initial bonded carrier shall be responsible for shortage, irregular delivery, or nondelivery at the port of destination or exportation of bonded merchandise received by it for carriage. An acceptable proof of proper delivery of bonded merchandise to Customs at the port of destination or exportation is a properly receipted copy of the in-bond document (the appropriate Customs Form 7512 or 7520, or the TIR carnet). When sealing is waived, any loss found to exist at the port of destination or exportation shall be presumed to have occurred while the merchandise was in the possession of the carrier, unless conclusive evidence to the contrary is produced.

* * * * * * *

5. The last sentence of paragraph (b) of section 18.13 would be revised to read as follows:

§ 18.13 Procedure; manifest.

* * * * * * *

(b) * * * Two copies of Customs Form 7520 and the related Customs Form 7512-C (destination) shall be delivered to the carrier to accompany the baggage and shall be delivered by the carrier to the district director at the port of destination as a notice of arrival.

* * * * * * *

6. Paragraph (c) of section 18.20 would be amended by removing the last sentence.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. Paragraphs (c)(1) and (d) of section 123.42 would be amended by substituting the word "(destination)" for the word "(duplicate)".

2. Section 123.42 would be amended by adding a new paragraph (g) to read as follows:

§ 123.42 Truck shipments transiting the United States.

* * * * * * *

(g) *Forwarding procedure.* Except as otherwise provided in this section, merchandise transported in trucks shall be forwarded in accordance with the general provisions for transportation in bond (sections 18.1–18.8 of this chapter).

* * * * * * *

3. Paragraph (b) of section 123.64 would be amended by substituting the word "(destination)" for the word "(duplicate)".

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

Paragraph (c) of section 144.36 and paragraph (a) of section 144.37 would be amended by removing the words, "in duplicate".

ALFRED R. DE ANGELUS,
*Acting Commissioner of Customs.*

Approved: September 21, 1983.
JOHN M. WALKER, JR.,
*Assistant Secretary of the Treasury.*

[Published in the Federal Register, October 14, 1983 (48 FR 46812)]

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# United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

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Edward D. Re

*Judges*

Paul P. Rao
Morgan Ford
Frederick Landis
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*Senior Judges*

Herbert N. Maletz

Samuel M. Rosenstein

*Clerk*

Joseph E. Lombardi

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# Decisions of the United States Court of International Trade

(Slip Op. 83-97)

BETHLEHEM STEEL CORPORATION, plaintiff *v.* UNITED STATES, defendant

Court No. 83-1-00026

Memorandum Opinion and Order of Dismissal

1. Affirmative and negative determination contained in a final determination of the ITA are severable for the purpose of seeking judicial review thereof in this court.

2. In a challenge to the sufficiency of the finding upon which a final negative determination of the ITA is based, this court lacks jurisdiction of the subject matter when the action is not commenced by the filing of a summons within thirty days after the date of publication of the final determination by the ITA in the Federal Register. 19 U.S.C. § 1516a(a)(2) (A)(i) and (B)(ii).

[Action dismissed for lack of jurisdiction of the subject matter.]

(Dated September 29, 1983)

*Eugene L. Stewart, Terence P. Stewart* and *Paul W. Jameson (Curtis H. Barnette, Meredith Hemphill, Jr., Laird D. Patterson* and *Roger W. Robinson* on the briefs) for the plaintiff.

*J. Paul McGrath,* Assistant Attorney General *(David M. Cohen,* Director, Commercial Litigation Branch and *Francis J. Sailer* on the brief) for the defendant.

Boe, *Judge:* On November 15, 1982, the International Trade Administration, Department of Commerce (ITA), published its final determination in the investigation of certain steel products from Spain. 47 Fed. Reg. 51438-52. In its final determination the ITA found the following:

> (1) That certain programs (preferential loans, privileged export credits, etc.) constitute countervailable subsidies.
>
> (2) That the mechanism whereby Spain rebates indirect taxes paid by Spanish steel exporters, Desgravacion Fiscal a la Exportacion (DFE), does not constitute a subsidy.

The International Trade Commission (ITC) on December 21, 1982, notified the ITA as to its determination that an industry in the United States is being materially injured by reason of steel imports from Spain. 48 Fed. Reg. 525 (1983).

On January 3, 1983, the ITA published countervailing duty orders based on the final affirmative determinations contained in the final determination of the ITA published November 15, 1982. 48 Fed. Reg. 51.

On January 7, 1983, the plaintiff filed a summons and complaint in this court challenging the finding of the ITA that the Spanish DFE does not constitute a countervailable subsidy. This action is presently before this court pursuant to the procedure provided by Rule 56.1 of the United States Court of International Trade.

The defendant questions the jurisdiction of this court to entertain the instant action. In raising this issue the defendant states it is prompted by two prior decisions: *United States Steel Corp.* v. *United States,* 5 CIT—, Slip Op. 83-59 (June 16, 1983) and *United States Steel Corp.* v. *United States,* 5 CIT —, Slip Op. 83-65 (June 28, 1983). Contending the determination of the ITA that the Spanish DFE program does not confer a subsidy upon the exporter and, accordingly, is a negative determination under the provisions of 19 U.S.C. § 1516a(a)(2)(B)(ii), the defendant claims that the summons commencing the instant action was untimely filed.

Since the defendant took a contrary position in the *United States Steel* cases, *supra,* its jurisdictional challenge is without conviction. When a question as to jurisdiction is suggested by the parties or presented by the pleadings in an action, it is incumbent upon the court to make a determination with respect thereto. Rule 12(h)(3) of the Court of International Trade Rules.

The provisions of the Trade Agreements Act of 1979 pertinent to the issues presented in the instant action are found in 19 U.S.C. § 1516a(a)(2) (A) and (B):

> (2) Review of determinations on record.—
>
> (A) In general.—Within thirty days after the date of publication in the Federal Register of—
>
> (i) Notice of any determination described in clause (ii), (iii), (iv), or (v) of subparagraph (B), or
>
> (ii) An antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B).
>
> an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Customs Court by filing a summons, and within thirty days thereafter a complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.
>
> (B) Reviewable determinations.—The determinations which may be contested under subparagraph (A) are as follows:
>
> (i) Final affirmative determinations by the Secretary and by the Commission under section 1303 of this title, or by the administering authority and by the Commission under section 1671d or 1673d of this title.
>
> (ii) A final negative determination by the Secretary, the administering authority, or the Commission under section 1303, 1671d, or 1673d of this title.

A civil action to review a final determination by the ITA is commenced in this court by the filing of a summons. Rule 3(a) of the Court of International Trade Rules. In the summons filed by the plaintiff in this court on January 7, 1983, paragraph 2 provides:

> 2. Plantiff contests the final affirmative determinations of the International Trade Administration (ITA) of the Commerce Department published on November 15, 1982 * * *. The countervailing duty order was published on January 3, 1983 (48 Fed. Reg. 51). These determinations are contested pursuant to 19 U.S.C. 1516a(a)(2)(A)(ii), 19 U.S.C. 1516a(a)(2)(B)(i) and 28 U.S.C. 1581(c).

The complaint was filed contemporaneously with the summons and likewise predicates the jurisdiction of this court under the statutory time limitations provided in 19 U.S.C. § 1516a(a)(2)(A)(ii) and

(B)(i), which directs the filing of a summons within 30 days of the publication of a countervailing duty order based on the final affirmative determinations of the ITA and the ITC. Notwithstanding the specific jurisdictional allegation in its summons and complaint, the plaintiff does not challenge the countervailing duty order of the ITA nor the final *affirmative* determinations which constitute the basis for the order. On the contrary, the gravamen of plaintiff's complaint and the prayer for relief contained therein challenge *only* the findings of the ITA as to the final negative determination of November 15, 1982.

A purpose of a pleading is to provide affirmative notice as to the statutory authority from which jurisdiction of an action stems.

> The sufficiency of the jurisdictional allegation is dependent on the validity of the pleader's assertion which is determined by reference to the relevant federal statute, rather than in terms whether the claim for relief is meritorious. 5 C. Wright and A. Miller, *Federal Practice And Procedure*, § 1206 (1969).

Although plaintiff contends that in the instant action it is challenging the countervailing duty order issued by the ITA, it is noteworthy that the order itself contains no mention of the ITA determination of November 15, 1982, holding that the Spanish DFE program did not constitute a subsidy. 48 Fed. Reg. 51 (1983). To accept plaintiff's contention would require this court to hold that the finding of the ITA in its final determination that the Spanish DFE program is not a subsidy, in fact, does not constitute a *negative determination*. Such an interpretation is contrary to the express meaning of the governing statute. A determination that a particular practice in not a subsidy is a negative determination. *Republic Steel Corp.* v. *United States*, 5 CIT—, Slip Op. 82-55 (July 15, 1982).

After careful examination of the pertinent statutes this court concludes that for judicial review purposes severability of the respective affirmative and negative determinations which may be included in a final determination of the ITA is required in order to permit compliance with express statutory language. 19 U.S.C. § 1516a(a)(2)(A) provides for the filing of a summons, commencing an action in this court, within 30 days after two specific publication dates. An interested party contesting a *countervailing duty order based on a final affirmative determination* of the ITA and ITC must commence an action within 30 days of the publication of *that* order. 19 U.S.C. § 1516a(a)(2)(A)(ii), (B)(i). On the other hand, an interested party desiring to contest any final *negative determination* by the ITA must file a summons in this court within 30 days after publication of the notice thereof in the Federal Register. 19 U.S.C. § 1516a(a)(2) (A)(i), and (B)(ii).

Two discrete time limitations for the commencement of an action in this court thus have been provided by Congress. It cannot be assumed that Congress failed to envision the possibility of a final de-

termination by the ITA comprising both affirmative as well as negative determinations. Admittedly, compliance with the statutory language might lead to undesirable piecemeal litigation. However, it is not the province of the court to invoke a construction of a statute which it might deem preferable but contrary to the express and unambiguous words comprising it. Should it be found that judicial efficiency is impaired thereby, the correction must be made by legislative fiat.

The court is satisfied that its conclusion is consistent with legislative intent. Congress intended to "streamline and expedite the review of antidumping and countervailing duty proceedings by providing for expedited judicial review of *all* reviewable determinations." (Emphasis added). H.R. Rep. No. 96-317, 96th Cong., 1st Sess. 181 (1979). In the case of a final affirmative determination by the ITA, Congress has indicated that judicial review should become available only after the ITC has made its determination on material injury.

> The effect of affirmative final determinations by both the Authority [ITA] and ITC will be that the Authority shall issue a countervailing duty order. However, if either of these final determinations in negative, the investigation will terminate upon publication of the negative determination. H.R. Rep. No. 96-317, 96th Cong., 1st Sess. 56 (1979).

The congressional intent of expedited review of administrative determinations would be poorly served in judicial review of a negative determination, despite the termination of the investigation, is required by the court to await the further and additional determination of the ITC with respect to any final affirmative determinations and the issuance of a countervailing duty order. The court in *Republic Steel Corp.*, *supra*, at 4–5, held that a preliminary determination that a particular practice is not a subsidy constitutes a negative determination:

> [T]he legislative history makes it unmistakeably clear that judicial review of these determinations was intended to reach every decision that a subsidy was not being provided—even if other subsidies were found to exist at the same time. * * * It is * * * reasonable to treat an investigation * * * into the existence of more than one subsidy * * * as resulting in a series of discrete and severable determinations, each of which resolves a question of whether imported merchandise was receiving a subsidy. [1]

This court, like the United States District Courts, possesses only limited jurisdiction. It has been repeatedly held that all actions

[1] Although this court's decisions in *United States Steel Corp.* v. *United States*, 5 CIT —, Slip Op. 83–59 (June 16, 1983) and *United States Steel Corp.* v. *United States*, 5 CIT —, Slip Op. 83–65 (June 28, 1983) are consistent with the legislative intent and language of the statute, they are not determinative in the instant action. These cases follow the statute in extending the holding in *Republic* (as to the severability of preliminary determinations) to final determinations.

The *United States Steel* cases hold, that while challenges to final affirmative ITA determinations are premature when made prior to the ITC final determinations in the case, challenges to final negative ITA determinations may be made upon publication thereof and prior to the final ITC action thereupon.

therein must be commenced within the defined limitation prescribed by statute. *Montgomery Ward & Co.* v. *Zenith Radio Corp.*, 69 CCPA —, 673 F. 2d 1254 (1982); *Kalpake* v. *Ribicoff*, 202 F. Supp. 495 (N.D. Ill. 1961); and *Le Mieux Bros. Inc* v. *Tremont Lumber Co.*, 140 F. 2d 387 (5th Cir. 1944). In the judicial review of administrative determinations, the courts have consistently held that the right of action against the United States is limited by the provisions of the statute which creates the right.

> Where the government conditionally waives its immunity from suit, there exists no discretion in this court to nullify the conditions imposed. *Zeller* v. *Folsom,* 150 F. Supp. 615, 617 (N.D.N.Y. 1956). *See* also *White* v. *Secretary of HEW,* 56 F. R. D. 497, 499 (N. D. N. Y. 1972).
>
> To bring an action under the statute, it is necessary for plaintiff to plead that the action was brought within the specified period in order to demonstrate that the United States has consented to suit and given the court a basis for asserting jurisdiction. 5 C. Wright and A. Miller, *supra*, § 1212.

The court therefore concludes that it affirmatively appears from the summons, complaint and the record herein that the plaintiff has neither asserted facts nor statutory authority necessary to give this court a basis for assuming jurisdiction. Nor has that instant action been commenced within the time prescribed by 19 U.S.C. § 1516a(a)(2)(A)(i) and (B)(ii).

The above-entitled action, accordingly, is hereby dismissed for lack of jurisdiction of the subject matter.

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(Slip Op. 83-98)

CHARLES SCRIBNER'S SONS, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 79-2-00276

Before RE, *Chief Judge.*

*Sierra Engagement Calendars 1979*

Engagement Calendars classified under Item 256.56 of the TSUS as "[b]lank books, bound: [d]iaries, notebooks, and address books," were produced, marketed, advertised and sold specifically as calendars and as a medium in which to show high-quality nature photography. Plaintiff's claim for classification as "[c]alendars of paper: [p]rinted on paper in whole or in part by a lithographic process" is sustained. Since the primary purpose of the item was to note dates for future appointments and references, the article was a calendar within the scope of Item 274.10, and dutiable at a rate of 6¢ per lb.

[Judgment for plaintiff.]

(Dated September 30, 1983)

*Weil, Gotshal and Manges* (Robert F. Brodegaard and Charles H. Bayar at the trial and on the brief), for the plaintiff.

*J. Paul McGrath*, Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Robert H. White* at the trial), for the defendant.

RE, *Chief Judge:* The question presented in this case pertains to the proper classification, for customs duty purposes, of certain merchandise imported from Japan and described on the invoice as the "Engagement Calendar 1979." The merchandise was classified as diaries under Item 256.56 of the Tariff Schedules of the United States (TSUS), as "[b]lank books, bound: [d]iaries," and was consequently assessed with duty at the rate of 10% ad valorem.

Plaintiff protests this classification and contends that the merchandise is properly classifiable under Item 274.10, TSUS, as calendars dutiable at the rate of 6¢ per lb. Plaintiff alternatively contends that the merchandise is properly classifiable under Item 274.75, as printed matter dutiable at the rate of 6¢ per lb., or under Item 256.58, as blank books dutiable at the rate of 4% ad valorem.

The pertinent statutory provisions of the tariff schedules are as follows:

*Classified by customs officials under:*

| | | |
|---|---|---|
| 256.56 | Blank books, bound:<br>Diaries, notebooks, and address books. | 10% ad val. |

*Claimed by plaintiff under:*

| | | |
|---|---|---|
| 274.10 | Calendars of paper:<br>Printed on paper in whole or in part by a lithographic process:<br>Not over 0.020 inch in thickness. | 6¢ per lb. |

*Alternatively claimed by plaintiff under:*

| | | |
|---|---|---|
| 274.75 | Other:<br>Printed on paper in whole or in part by a lithographic process:<br>Not over 0.020 inch thick.......... | 6¢ per lb. |
| and | | |
| 256.58 | Blank books, bound:<br>Other.............................................. | 4% ad val. |

The question presented is whether the imported articles are "diaries" as classified by customs, or "calendars" as claimed by plaintiff. If the imported "Engagement Calendar" is not a calendar within 274.10, then the court must determine whether it is properly classifiable as "[o]ther: [p]rinted on paper in whole or in part by a lithographic process * * *," or as "[b]lank books, bound: [o]ther."

Since the primary purpose of the merchandise is to note dates for future appointments and references, it is the determination of this court that the imported articles are properly classifiable as calendars within the scope of Item 274.10, TSUS, with a duty rate of 6¢ per lb.

At trail, plaintiff presented five witnesses who were responsible for the creation, production, marketing, advertising, purchasing and sale of the "Engagement Calendar." Their testimony reveals distinctions between diaries and calendars with respect to the kind of binding, the type of paper, use of space and the essential purpose of each. Plaintiff contends that the testimony of these witnesses, together with an examination of the article itself, establishes that the imported merchandise has been erroneously classified as diaries.

The first witness, Mr. Ian Ballantine, owner of Ballantine Books, in 1967, conceived the idea of publishing a calendar depicting carefully selected, high-quality nature photography of the Sierra Club. The original calendar, published for 1968, was a wall calendar. In 1969, however, Ballantine Books published a spiral-bound desk version called an "Engagement Calendar" with photographs on the left side and a table of the days of the week on the right side. Mr. Ballantine testified that Scribner's Sons assumed the publishing of the "Engagement Calendar" about four or five years later, and that the format of the desk calendars was never changed. The merchandise in issue in this case, which is the 1979 version of Mr. Ballantine's calendar, is entirely bound and approximately 9⅜ inches long by 6½ inches wide, and contains throughout high-quality photographs of nature scenes. Plantiff's exhibit 1, which is a representative sample of the importation, is entitled "Wilderness 1979 Sierra Club Engagement Calendar" and depicts, among others, scenes from Yosemite National Park, Grand Canyon, Rocky Mountain National Park and Boulder Mountain Park.

Mr. Ballantine, who has been in the book publishing business since 1939, defined a "calendar" as understood in the publishing business. He stated that it was "a device for keeping dates in front of one, usually there's a group of dates not one date. A place to put down a dentist's appointment." All of plaintiff's witnesses agreed with this definition. Mr. Ballantine also testified that, from the outset, the "Engagement Calendar" was created, published and marketed on a nationwide scale as a calendar, and, in his opinion, could never be considered a diary. He noted that among the physical characteristics which distinguish the merchandise from a diary was the quality of paper, which he stated, was not suited to a large

amount of writing. The paper was used to achieve better results in photographic reproduction and contained unlined space allotted to each day of the week, approximately one inch by $14^{13}/_{16}$ inches, which does not allow for lengthy notations typical of diary use.

Mrs. Monica Brown Lamontagne, vice-president of art and production at Scribner's Sons since 1978, testified that the intention of the designers of the calendar was to provide a useful desk calendar, and to have a medium in which to show photographs they thought were exemplary. As a result, approximately 90% of the time, effort and expense in producing the calendar was devoted to the photographs and their reproduction, the quality of which, in her opinion has been responsible for its success. She also testified that although Scribner's Sons had received numerous complaints about the titanium-coated paper, they chose not to change the paper since it was best suited for their primary interest—the promotion of the Sierra Club photographs.

Mr. Franklin L. Rodgers, President and chief operating officer of the plaintiff, testified that all those involved in the negotiations, by which plaintiff obtained publishing rights to the "Engagement Calendar," recognized it as a calendar and not as a diary. Mr. Rodgers also testified that the desk calendar version has been marketed throughout the country as a calendar because it was not suitable as a diary. He added that the merchandise was unlike diaries because it was not bound like a regular book, and noted that the spiral binding was not permanent. In Mr. Rodger's view, a diary would be expected to have a more permanent type of binding which could be labelled and shelved for future reference.

Mr. Spencer Gale, a buyer for Doubleday Bookstores, testified that he purchased the imported merchandise as calendars, and that they are sold to his customers primarily to note events that will happen in the future. According to Mr. Gale, the purpose of the imported merchandise is to " organize your schedule," and is unsuitable for use in making a daily record of personal reflections or feelings.

Plaintiff contends that the evidence presented at trial has completely rebutted the presumption of correctness which attaches to the Government's classification. 28 U.S.C. § 2639(a)(1)(1976). Plaintiff further contends that the calendar classification, Item 274.10 of Part 5, TSUS, is a more specific classification than Item 256.56 of Part 4, TSUS, and therefore the merchandise should not be classified as a diary since under headnote (1)(ii) of Part 4, Schedule 2, any article that can be classified under Part 5 is excluded from Part 4. In support of this contention plaintiff cites General Interpretative Rule 10(c) which provides that "an imported article which is described in two or more provisions of the schedules is classifiable in the provision which most specifically describes it * * * ." Plaintiff also contends, in the alternative, that even if the court finds Item 274.10 inapplicable, a more suitable classification still

exists, depending upon whether the merchandise is found to be essentially "textual or pictorial matter," or "concerning paper, paperboard and products thereof." If the former, the proper classification would be under Part 5, in Item 274.75, as [o]ther: [p]rinted on paper in whole or in part by a lithographic process * * *." If the latter, the merchandise would fall under Part 4, in Item 256.58, as [b]lank books, bound: [o]ther."

Plaintiff contends that the most specific classification of the merchandise is that of calandars. It submits that the essential purpose and physical characteristics of the imported merchandise, together with the testimony of the witnesses, clearly establish the proper classification under Item 274.10, as calendars.

The defendant maintains that the merchandise was properly classified since it comes within the judicially determined meaning of the tariff term "diary." At the trial, it presented the definition of "diary" from Webster's *Third New International Dictionary of the English Language* (1961) as: "a register or record of events, transactions or observations kept daily or at frequent intervals or a daily record of personal activities, reflections of feelings."

Defendant also maintains that the decision in *Brooks Brothers, Div. of Julius Garfinckel & Co., Inc.* v. *United States,* 68 Cust. Ct. 91, C.D. 4342 (1972), controls the present case since it determined that a spiral bound book, measuring eight inches by ten inches, with blank pages for recording events and appointments, constituted a diary because it conformed to the lexicographical definitions of a diary. In addition, defendant cites *Fred Baumgarten* v. *United States,* 49 Cust. Ct. 275, Abs. 67150 (1962), where the court noted that "the particular and distinguishing feature of a diary is its suitability for the receipt of daily notations," *Id.* at 276, stating that the "Engagement Calendar" contains ample space to make daily notations.

Aside from the alloted space for each day, defendant asserts that one can make notations on the blank areas under approximately one-third of the photos, as well as the entirely blank page labelled "notes" at the end of the "Engagement Calendar." Since plaintiff did not offer evidence to contradict this fact, defendant submits that the original classification is correct. It also asserts that the primary use of the merchandise is crucial, and that the essential character of the merchandise evolves from the blank spaces which permit daily notations. It contends that since the merchandise is primarily used for completing the blank spaces in the "Engagement Calendar," classification under Item 256.56 should be sustained.

It is well established that the lawful and proper classification for imported merchandise is that which "most specifically" describes it. General Interpretative Rule 10(c). To determine the most specific classification of the merchandise in this case, the court must look to its prior decisions which pertain to both diaries and calen-

dars, and examine the available lexicographic definitions of both terms as well as the testimony given at trial.

*Charles F. Sormani & Alltransport, Inc.* v. *United States,* 33 Cust. Ct. 423, Abs. 58502 (1954), appears to be the only case which has specifically found imported merchandise to be a calendar for customs duty purposes. In that case the Court held that a space left for daily notations, which measured approximately three-eighths of an inch by two inches, did not render the merchandise suitable as a diary under the tariff provisions. Hence, the court sustained plaintiff's protest for classification as calendars and stated that they were "not rendered less so because space has been set aside for notations * * *." *Id.* at 424.

Two cases are illustrative of the judicial decisions which have interpreted and applied the term "diary". In the first case, *Fred Baumgarten,* 49 Cust. Ct. 275, Abs. 67150 (1962), the court determined that the merchandise was most suitable for use as a diary because it offered whole pages allocated to "spaces for hourly entries during the course of each day of the year." *Id.* at 276. the court held that the books were designed for the very purpose of recording daily events or transactions, and could not be classified as anything but diaries under Item 256.56, TSUS.

The second case, upon which the defendant relies heavily, is *Brooks Brothers, etc.,* 68 Cust. Ct. 91. C.D. 4342 (1972). In *Brooks Brothers,* based upon *Fred Baumgarten* and other precedent, the court held that merchandise, entitled the "Economist Diary," was a diary since it was produced, marketed and sold as such, notwithstanding the fact that it contained additional information which the court found did not change the essential nature of the article. While both *Fred Baumgarten* and *Brooks Brothers* establish what is a diary for customs duty purposes, they do not, however, distinguish between a diary and a calendar. Therefore, contrary to the defendant's assertion, they do not govern the result in the present case.

Since the tariff schedules are written in the language of commerce, and the terms used are to be given their "commercial" or "common" meaning, *United States* v. *Victoria Gin Co., Inc.,* 48 CCPA 33, C.A.D. 759 (1960); *Nylos Trading Co.* v. *United States,* 37 CCPA 71, C.A.D. 423 (1949), this court must examine the lexicographic sources and the testimony given at trial to determine whether the importation is a diary or a calendar.

Perhaps the most authoritative dictionary for the purpose of interpreting the tariff schedules is Webster's *Third New International Dictionary of the English Language,* since it was published contemporaneously with the promulgation of the tariff schedules. *Air-Sea Forwarders, Inc.* v. *United States,* 76 Cust. Ct. 268, C.D. 4665 (1976). In pertinent part, that dictionary defines calendar and diary respectively as follows:

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*Calendar*

1: calendar n. * * * 2(a): *a tabular register of days according to a system usu[ally] covering one year,* referring the days of each month to the days of the week. * * * 4: *an orderly list of persons, thing or events; as * * * d: a list of events or activities giving dates and details of planned events * * *; also: a list of events or the series of events scheduled for a particular period of time * * *.* [*Emphasis added.*]

*Diary*

1: a register or record of events, transactions or observations kept daily or at frequent intervals: Journal: esp: *a daily record of personal activities, reflections, or feelings.* 2: a book intended for or used for a diary. [Emphasis added.]

The other authoritative dictionaries reflect the essence of Webster's version. For example, Funk & Wagnall's *New Practical Standard Dictionary of the English Language* (1963) defines the respective terms as follows:

*Calendar*

1: *A systematic arrangement of* subdivisions of times, as *years, months, days, weeks, etc.* * * * 3: *A schedule* or list *of things or events* classified or *chronologically arranged*: [Emphasis added.]

*Diary*

1: A record of daily events; especially *a personal record of one's activities, experiences, or observations*; a journal. 2: A book for keeping such record * * *. [Emphasis added.]

Mr. Ballentine's informal definition, with which all other witnesses agreed, that a calendar is a "device for keeping dates * * * [with a] place to put down a dentist's appointment," also comports with the definition found in Webster's dictionary. Thus, to distinguish between the two terms by way of example, a calendar is not primarily intended to be used in connection with extensive notations, but rather as a list or enumeration of persons, things or periods of time. A diary, on the other hand, is primarily intended to be used in connection with extensive notations, and is more like a chronicle or journal which records events, transactions or observations.

The merchandise in issue contains fifty-three calendar pages, each bearing the month at the top and includes seven separate blocks of space devoted to one day of the week. The space allocated to each block is miniscule, measuring approximately one-inch by $4^{13}/_{16}$ inches, and was intended for a notation of no more than a sentence or two. Although there is additional blank space under approximately one-third of the photographs, that space is not uniform, and exists only because some photographs are smaller than others. Thus, that space was obviously not intended to be used primarily for extensive notations.

Witnesses who are now and have been directly responsible for the design, marketing, production and sale of the "Engagement Calendar," testified emphatically that it was created, marketed and sold as a calendar, the main purpose of which was to convey Sierra Club photography. An examination of the article fully supports the testimony. The titanium-coated paper used, for example, was unlined and of a kind more suitable to highlighting the photographs rather than for writing. Both the spiral binding and graphic format further support the testimony that it was created and is purchased primarily as a calendar containing photographs and not as a diary.

Since a diary is a device "suitable for the receipt of daily notations," *Fred Baumgarten,* 49 Cust. Ct. at 276, and the "Engagement Calendar" is clearly not primarily suitable for such a purpose, "it would do violence to the essential nature of the merchandise to classify it under any provision other than the one that describes it perfectly." *Brooks Brothers,* 68 Cust. Ct. at 96.

It is the finding of this court that the testimony of the witnesses, together with an examination of the "Engagement Calendar," establishes that its essential purpose was to convey high-quality Sierra Club photography in the form of a calendar. Further, the additional space which exists in the one blank, two-sided note page, and under approximately eighteen pages of the "Engagement Calendar," clearly does not render the "Engagement Calendar" suitable for diary purposes. Since plaintiff has met its burden of proof, it is unnecessary to consider the alternative claims presented under any of the other tariff provisions.

In view of the foregoing, it is the determination of the court that the imported "Engagement Calendars" are properly classifiable under Item 274.10, TSUS, as "[c]alendars of paper: [p]rinted on paper in whole or in part by a lithographic process: [n]ot over 0.020 inch in thickness" with duty (as modified by T.D. 68-9) of 6¢ per lb.

Judgment will issue accordingly.

# Decisions of the United States Court of International Trade

## *Abstracts*

## *Abstracted Protest Decisions*

DEPARTMENT OF THE TREASURY, *October 6, 1983.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the Customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary here given will be of assistance to Customs officials in easily locating cases and tracing important facts.

WILLIAM VON RAAB,
*Commissioner of Customs.*

| DECISION NUMBER | JUDGE & DATE OF DECISION | PLAINTIFF | COURT NO. | ASSESSED | HELD | BASIS | PORT OF ENTRY AND MERCHANDISE |
|---|---|---|---|---|---|---|---|
| | | | | Item No. and Rate | Item No. and Rate | | |
| P83/290 | Watson, J. September 29, 1983 | Camel Manufacturing Co. | 81-4-00398 | Item 389.62 25¢ per lb. + 15% | Item A386.09 Free of duty | Agreed statement of facts | New Orleans (Knoxville) Tents |
| P83/291 | Watson, J. September 29, 1983 | Camel Manufacturing Co. | 81-9-01275 | Item 389.62 25¢ per lb. + 15% | Item A386.09 Free of duty | Agreed statement of facts | New Orleans (Knoxville) Tents |

| DECISION NUMBER | JUDGE & DATE OF DECISION | PLAINTIFF | COURT NO. | ASSESSED | HELD | BASIS | PORT OF ENTRY AND MERCHANDISE |
|---|---|---|---|---|---|---|---|
| | | | | Item No. and Rate | Item No. and Rate | | |
| P83/292 | Watson, J. September 29, 1983 | Federal Transistor Co., Inc. | 81-9-01266 | Item 678.50 5%<br>Item 720.16 16% + 75¢ each | Item 678.50 5% | Agreed statement of facts | Los Angeles<br>AM/FM/TV band solid-state digital radio/8-track player combinations incorporating timedipping devices with LED displays |
| P83/293 | Boe, J. September 29, 1983 | General Time Corporation | 78-12-02156, etc. | Item 720.02, 720.14 or 720.18 Various rates | Item 688.36 5.5% or 5.3% | Agreed statement of facts | Savannah<br>LED clock modules with or without other words of description |
| P83/294 | Boe, J. September 29, 1983 | Lloyd's Electronics, Int'l. | 81-6-00741 | Item 720.34 13.5%<br>Item 720.02 37¢ each | Item 688.36 5.5% | Agreed statement of facts | New York<br>Solid-state digital timekeeping devices with LED displays |
| P83/295 | Boe, J. September 29, 1983 | Timex Corporation | 82-3-00294 | Not stated | Item 688.36 5.5% or 5.3% | Agreed statement of facts | Boston (Bridgeport)<br>Solid-state electronic watches, clocks, or modules |
| P83/296 | Ford, J. October 5, 1983 | Berkshire Handkerchief Co., Inc. | 81-9-01294 | Item 389.62 15% + 25¢ per lb. | Item 706.24 20% | J. E. Mamiye & Sons, Inc. v. U.S. (C.D. 4878) | New York<br>Ladies' tote bags, handbags |
| P83/297 | Ford, J. October 5, 1983 | Solid State Products Corp. | 80-7-01184 | Item 389.62 15% + 25¢ per lb. | Item 706.24 20% | J. E. Mamiye & Sons, Inc., v. U.S. (C.D. 4878) | New York<br>Ladies' tote bags |
| P83/298 | Ford, J. October 5, 1983 | Solid State Products Corp. | 82-3-00304 | Item 389.62 15% + 25¢ per lb. | Item 706.24 20% | J. E. Mamiye & Sons, Inc. v. U.S. (C.D. 4878) | New York<br>Ladies' tote bags |
| P83/299 | Watson, J. October 5, 1983 | Edison Brothers Stores Inc. | 83-3-00364 | Item 700.95 12.5% | Item 700.56 6% | Agreed statement of facts | Los Angeles<br>Women's sandal footwear |
| P83/300 | Watson, J. October 5, 1983 | Olympia Sports Co., Inc. | 81-6-00784 | Item 705.85 15% | Item A735.05 Free of duty | Agreed statement of facts | New York<br>Men's sports gloves and mittens |

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|---|---|---|---|---|---|---|---|
| P83/301 | Boe, J. October 5, 1983 | A & A International Inc. | 82-9-01347 | Items 716.18, 720.02, 720.28, etc. Various rates ("watch or clock movements") Item 740.35 32.4% or 29.8% ("watchbands") | Item A676.20 Free of duty (merchandise marked "A") Item 688.36 5.3% (merchandise marked "B") | Texas Instruments, Inc. v. U.S. 1 CIT 236 (1981) aff'd No. 81-23 3/25/82 | Dallas/Ft. Worth Solid state timing devices |
| P83/302 | Boe, J. October 5, 1983 | Arrow Trading Co., Inc. | 82-1-00010 | Item 720.02 35¢ each (clock movements assembled, etc.) Item 715.29 34¢ each + 14.8% | Item 685.24 9.9% or 9.3% | Texas Instruments, Inc. v. U.S. 1 CIT 236 (1981) aff'd No. 81-23 3/25/82 | New York Clock portion of LCD clocks with radios |
| P83/303 | Boe J. October 5, 1983 | Bradley Time Div., Elgin National Industries Inc. | 82-11-01610 | Item 716.18 38¢ each ("watch or clock movements") Item 720.18 9.8% + $.048 ("watch cases") | Item 688.36 5.3% | Texas Instruments, Inc. v. U.S. 1 CIT 236 (1981) aff'd No. 81-23 3/25/82 | New York Solid state electronic watch modules, solid state electronic watches, and other solid state electronic timing devices; entirety |

# Decisions of the United States Court of International Trade

## *Abstracts*

### *Abstracted Reappraisement Decisions*

| DECISION NUMBER | JUDGE & DATE OF DECISION | PLAINTIFF | COURT NO. | BASIS OF VALUATION | HELD VALUE | BASIS | PORT OF ENTRY AND MERCHANDISE |
|---|---|---|---|---|---|---|---|
| R83/635 | Watson, J. October 3, 1983 | Leyden Customs Expediters, Inc. | R61/1788, etc. | United States value | Said dutiable values per lb. specified on attached schedule in column designated "Dutiable Value" | Agreed statement of facts | New York Thiourea |
| R83/636 | Watson, J. October 3, 1983 | Yu, Ka S. | 81-7-00899S | Export value | F.o.b. invoice unit value of $1.19 per pair, net packed, f.o.b. Hong Kong as set forth in agreed statement of facts | Agreed statement of facts | Los Angeles Cotton shoes, Item No. 7164B |
| R83/637 | Re, C.J. October 5, 1983 | Alfar Imports Ltd. | 76-5-01092, etc. | Export value | Appraised values shown on entry papers less additions included to reflect currency revaluation | C.B.S. Imports Corp. v. U.S. (C.D. 4739) | New York Not stated |

| DECISION NUMBER | JUDGE & DATE OF DECISION | PLAINTIFF | COURT NO. | BASIS OF VALUATION | HELD VALUE | BASIS | PORT OF ENTRY AND MERCHANDISE |
|---|---|---|---|---|---|---|---|
| R83/638 | Re, C.J. October 5, 1983 | C. Itoh & Co. (America) Inc. | 73-3-00810 | Export value (entries listed on attached schedule with suffix "A") United States value (entries listed on attached schedule with suffixes "D" and "E") | Appraised values shown on entry papers less additions included to reflect currency revaluation (entries listed on attached schedule with suffix "A") Landed paid prices less statutory deductions for general expenses and profit in amount of 11.72% thereof less freight, insurance and duty, provided that said deductions do not result in an appraised value below f.o.b. invoiced values, less additions included to reflect currency revaluation (entries listed on attached schedule with suffix "A") Landed duty paid price less statutory deductions for general expenses and profit in an amount of 11.72% thereof less freight, insurance and duty, provided that said deductions do not result in an appraised value below f.o.b. invoice values | C.B.S. Imports Corp. v. U.S. (C.D. 4739) | New York Not stated |
| R83/639 | Re, C.J. October 5, 1983 | Macy's of California | 73-7-01992 | Export value | Appraised values specified on entry papers by liquidating officer, less additions included to reflect currency revaluation | C.B.S. Imports Corp. v. U.S. (C.D. 4739) | San Francisco Not stated |

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|---|---|---|---|---|---|---|---|
| R83/640 | Re, C.J. October 5, 1983 | Mitsui & Co. (U.S.A.), Inc. | 73-3-00637, etc. | Export value | Appraised values shown on entry papers less additions included to reflect currency revaluation | C.B.S. Imports Corp. v. U.S. (C.D. 4739) | Houston; Mobile<br>Not stated |
| R83/641 | Watson, J. October 5, 1983 | First Chemical Products, Inc. | 74-10-02834, etc. | American selling price | $6.90 per kilogram | Agreed statement of facts | New York<br>Sulfamethazine, U.S.P. grade |
| R83/642 | Watson, J. October 5, 1983 | New York Merchandise Co., Inc. | R60/10342, etc. | Export value | F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values | Agreed statement of facts | San Diego<br>Tube and tublar rugs |

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## U.S. Customs Service



## Customs Service Decisions





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